

HEGEL'S

POLITICAL PHILOSOPHY

Themes and Interpretations

Evangelia Sembou (ed.)

Peter Lang

This collection examines different themes and offers novel interpretations of Hegel's political philosophy. Thus, it sheds new light on what has been perhaps the most controversial area of Hegelian scholarship. It includes eight essays by a group of international scholars at different stages of their career. Its distinctive contribution is that it explores both Hegel's early and mature political philosophy. It includes a paper on Hegel's early essay on "Natural Law", published in two instalments in 1802 and 1803, and the *System of Ethical Life*, also published in 1802-1803, as well as papers on Hegel's *Philosophy of Right* (published in 1821). Two papers also discuss "The German Constitution", written between 1798 and 1802. The volume comes as an addition to the current debate that has been occasioned by the bicentenary of Hegel's *Philosophy of Right*.

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Oxford · Bern · Berlin · Bruxelles · New York · Wien

Bibliographic information published by Die Deutsche Nationalbibliothek.
Die Deutsche Nationalbibliothek lists this publication in the Deutsche
Nationalbibliografie; detailed bibliographic data is available on the Internet at
<http://dnb.d-nb.de>.

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Sembou, Evangelia, editor.

Title: Hegel's political philosophy : themes and interpretations /
Evangelia Sembou (ed.).

Description: Oxford ; New York : Peter Lang, 2022. | Includes
bibliographical references and index.

Identifiers: LCCN 2021035564 (print) | LCCN 2021035565 (ebook) | ISBN
9781800796225 (paperback) | ISBN 9781800796232 (ebook) | ISBN
9781800796249 (epub)

Subjects: LCSH: Hegel, Georg Wilhelm Friedrich, 1770-1831--Political and
social views. | Political science--Philosophy.

Classification: LCC JC233.H46 H45 2022 (print) | LCC JC233.H46 (ebook) |
DDC 320.01--dc23/eng/20211007

LC record available at <https://lcn.loc.gov/2021035564>

LC ebook record available at <https://lcn.loc.gov/2021035565>

Cover design by Brian Melville for Peter Lang.

ISBN 978-1-80079-622-5 (print)

ISBN 978-1-80079-623-2 (ePDF)

ISBN 978-1-80079-624-9 (ePUB)

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Published by Peter Lang Ltd, International Academic Publishers,
52 St Giles, Oxford, OX1 3LU, United Kingdom
oxford@peterlang.com, www.peterlang.com

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This publication has been peer reviewed.

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Introduction

Fifty-one years have passed since the publication of Walter Kaufmann's collection with the title *Hegel's Political Philosophy*, which dealt with controversies in Hegel's political theory.¹ One year later Zbigniew Pelczynski published his own momentous collection entitled *Hegel's Political Philosophy: Problems and Perspectives*.² This was followed a decade later by Pelczynski's equally celebrated collection *The State & Civil Society: Studies in Hegel's Political Philosophy*, which focused on the distinction between the state and civil society in Hegel's political thought.³ Robert Williams's *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* was the first collection to appear after almost twenty years.⁴ As its title suggests, this latter argued that Hegel's political theory offered an alternative to both individualist liberalism and communitarianism. A decade later Thom Brooks's *Hegel's Philosophy of Right* appeared, a collection of essays that address ethics, politics, and law in Hegel's mature political work.⁵ More recently, Thom Brooks and Sebastian Stein published a collection entitled *Hegel's Political Philosophy: On the Normative Significance*

- 1 W. A. Kaufmann (ed.), *Hegel's Political Philosophy* (New York: Atherton Press, 1970).
- 2 Z. A. Pelczynski (ed.), *Hegel's Political Philosophy: Problems and Perspectives* (Cambridge: Cambridge University Press, 1971).
- 3 Z. A. Pelczynski (ed.), *The State & Civil Society: Studies in Hegel's Political Philosophy* (Cambridge: Cambridge University Press, 1984).
- 4 R. R. Williams (ed.), *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* (Albany: State University of New York Press, 2001).
- 5 T. Brooks (ed.), *Hegel's Philosophy of Right* (Malden, Oxford, and Chichester: Wiley-Blackwell, 2012).

of *Method and System*, which examines how the Hegelian method and system inform Hegel's political philosophy.⁶

The present volume is meant to add to this literature. Its distinctive contribution is that it includes a paper on Hegel's early essay on *Natural Law*,⁷ published in two instalments in 1802 and 1803, and the *System of Ethical Life*, also published in 1802–1803, as well as papers on Hegel's *Philosophy of Right* (1821). Two papers also discuss "The German Constitution," written between 1798 and 1802. The book offers novel interpretations of various themes in Hegel's political philosophy, while the essays are written by a group of international scholars.

In Chapter 1 Ayumi Takeshima reads Hegel's early essay on *Natural Law* and the *System of Ethical Life* as a starting-point for his political thought in the Jena period. She argues that in the essay on *Natural Law* Hegel's political thought takes the form of "reconciliation without recognition"; the concept of recognition, especially mutual recognition between individuals, has not yet been established. There is only religious reconciliation in Greek tragedy or Christianity. Takeshima maintains that the *System of Ethical Life* is Hegel's first work to present his theory of recognition systematically. However, she says, this is heavily influenced by Fichte's natural law theory and is immature compared to the theory of recognition in the late Jena period. She argues that here Hegel's political thought takes the form of "recognition without reconciliation." She concludes by claiming that Hegel's theory of mutual recognition must wait until the *Phenomenology of Spirit*. Eventually, Hegel's political philosophy combines recognition and reconciliation.

In Chapter 2 I am doing two things. First, I argue that in the *Philosophy of Right* Hegel did not put forth a blueprint for or a model of a state. Instead, he renders explicit the principles immanent in the notion of the

6 T. Brooks and S. Stein (eds), *Hegel's Political Philosophy: On the Normative Significance of Method and System* (Oxford and New York: Oxford University Press, 2017).

7 The full title of the essay is "On the Scientific Ways of Treating Natural Law, on its Place in Practical Philosophy, and its Relation to the Positive Sciences of Right." See G. W. F. Hegel, *Political Writings*, ed. L. Dickey and H. B. Nisbet (Cambridge: Cambridge University Press, 1999, digital printing 2009), pp. 102–180.

state. Second, I contribute to the debate in Hegel scholarship as to the relation of the *Philosophy of Right* to Hegel's larger philosophical system. The debate was initiated by Thom Brooks and prompted the response of Paul Redding, Michael Rosen, and Allen Wood. Adopting Nance's distinction between "internal-systematic" and "external-systematic" readings of Hegel's *Philosophy of Right*, I analyze the structure and argument of the *Philosophy of Right*, attending to its *internal* systematicity. The argument of the *Philosophy of Right* is so structured that the state proves to be the creation of the individual will. The three parts of the *Philosophy of Right* – that is, "Abstract Right," "Morality," and "Ethical Life" – are "moments" or aspects of the whole. Each stage arises out of the contradictions or inadequacies of the previous one.

In Chapter 3 Günter Zöller places Hegel's political philosophy, mainly presented in *Elements of the Philosophy of Right* (1820–1821) but already laid out in *The German Constitution* (1799–1802), in the context of the debate between the ancients and the moderns about the relation between the citizen and the state. Zöller argues that Hegel's was a third, conciliatory position beyond the fixed opposition between the ancient republican ideal of civic commitment and the modern ideal of individual liberty and personal self-fulfillment. He pays particular attention to the early Hegel's analysis of personal liberty and political liberty in Germany's past and present and to the later Hegel's distinction between civil society and the political state in modern times. He focuses on the historical and systematic linkage between political liberty and political representation, as well as on the status and function of the "estates" in Hegel. So far as methodology is concerned, Zöller maintains that it is necessary to supplement Hegel's main published work on political philosophy, viz. *Elements of the Philosophy of Right*, which presents his mature thought, with the narrower context of his earlier published and unpublished work on political philosophy as well as with the wider context of modern political theory and practice in general and Germany's earlier and more recent political history in particular. In Section 1 Zöller relates Hegel's politico-philosophical thought to the contemporary debate about the liberty of the ancients and the liberty of the moderns, as Benjamin Constant put it. In Section 2 he discusses the early Hegel's polemical portrayal of Germany's failing constitution under

the Old Empire, concentrating on his distinction between the twofold liberty to be found in Germany's peculiar political landscape both past and present ("German freedom"). In Section 3 he draws on the two distinctions between ancient and modern liberty and between the two kinds of "German freedom" to clarify the mature Hegel's novel distinction between civil society and the political state.

In Chapter 4 Eduardo Assalone advances a novel reading of Hegel's political organicism based on three "thematic nuclei" that are present in *Elements of the Philosophy of Right*: First, the mutual dependence of the whole and the part within ethical life; second, the threefold syllogistic mediation of the state by civil society and the powers of the state with each other; and, third, the conception of the people as an organic whole. He argues that political organicism advances a conception of society and the state that is a theoretical bulwark both against liberal atomism and the totalitarian subjugation of individual freedom. For Assalone, this reappraisal of Hegel's organicism starts from an understanding of society as a single body, according to which every intersubjective relationship is a bond of corporal interdependence. Simultaneously, it emphasizes the moment of harmony between the powers of the state, so that political conflicts are resolved in the appropriate institutional spaces. He maintains that political organicism is also connected to a defence of the legitimacy of the state's right to intervene in private activity, while at the same time continuing to value the mediating role of the individual as individual and recognizing the organizations of civil society as fundamental to popular participation. Finally, Assalone argues, Hegel's organicism introduces a complex conception of descriptive representation that can be associated with a "politics of presence" based on the equal recognition of every social group.

In Chapter 5 Andrea Serra explores the roots and influences of the realism of Hegel's political philosophy. These can be found, according to Serra, both in the German historical-cum-political context and in Machiavelli's thought. He argues that his purpose is not only to provide a different perspective from the classic Marxian interpretation, which has always seen Hegelian political philosophy as apologetic and mystical, but also to demonstrate the originality of the two concepts of *Sittlichkeit* and *mediations*, as these are the real operative instruments of Hegelian realism.

His aim is to show how these categories can be useful for the present, particularly in relation to the crisis of our democratic systems, which are increasingly weak in the face of populism. Hegel's insight is that in complex systems true freedom can only be achieved through mediations. Immediacy, the revolver shot, can only be the "black night of the black cows," according to the famous phrase of the preface to the *Phenomenology of Spirit*.

In Chapter 6 Angelo Narváez León and Pablo Pulgar Moya approach the religious dimension of Hegel's critique of political economy in order to contextualize and analyze both Catholicism and Protestantism as different experiences of the spatial behaviour of modern capitalist societies. They start from the recognition of a radical critique of capitalism in Hegelian political philosophy. Moreover, they adopt a logical perspective rather than an anthropological or ethnographic one. From that perspective, they argue, a confrontation with the theses of Weber and Troeltsch does not show a theological-subjective origin of modern colonization but establishes a difference between its variable historical development, their specific religious realization exemplified by the formally independent post-colonial countries of North and South America, and the way in which these new national economies replicate the original contradictions of capitalism on a new differential global scale.

In Chapter 7 Sebastian Stein examines two egalitarian critiques of Hegel's account of civil society, those of Jean François Kervégan and of Frank Ruda, that seem to reject his accounts of poverty and inequality, as well as his philosophical method. These critics deny that poverty and some excessive inequalities are part of right and suggest that all philosophical thought is conditioned. Stein argues that for Hegel a successful, philosophical account of civil society explains poverty and inequality as necessary companions of wealth creation and distribution. This argument, Stein maintains, is based on the logic of the unconditioned, metaphysical concept that freely implies the negation of its positive moment. When the concept-based, unconditioned truth is comprehended by finite philosophers, their thought and truth coincide. Stein notes that this might mean that the empirically situated thinker Hegel may have failed the concept's standard and that his egalitarian critics have a superior concept of civil society. However, he continues, these critiques would have been more

successful had they included an immanent refutation of Hegel's method and deductions.

In Chapter 8 Mark Tunick makes an argument in favour of the practical relevance of Hegel's *Philosophy of Right*. He demonstrates how in his mature work Hegel develops a political philosophy that takes individuals to be both (i) part of an "ethical substance" that shapes them and provides an objective basis for establishing what is right, and (ii) agents of will with a right of "subjectivity," that is, a right to know the grounds of the laws they ought to obey. Tunick argues that Hegel uses this right of "subjectivity" to articulate a theory of criminal accountability that is relevant to modern debates about whether the law should recognize defences on the basis of insanity or culture. According to Tunick, Hegel's approach challenges utilitarians and theorists who resolve legal issues by considering the economic efficiency of the outcome(s). Arguing against those theorists who criticize Hegel on the grounds that his philosophy is unintelligible, Tunick maintains that, not only is Hegel's theory intelligible, it presents an understanding of an individual's place in society and the significance of social relations and upbringing, as well as a conception of freedom and human dignity that are lacking in the utilitarian analysis.

All in all, the essays that are contained in this volume address several themes and offer novel interpretations of Hegel's political philosophy. I entertain the hope that this collection will be a valuable addition to the literature on the subject.

1 Hegel's Early Political Philosophy

The *Natural Law* Essay and the *System of Ethical Life*

The Jena period (1801–1806) refers to when Hegel worked at the University of Jena. Hegel's view of the community changed significantly during this relatively short period.¹ To summarize: (1) Hegel initially held an ancient view of the “organic” community as influenced by Romanticism; (2) he eventually came to the idea of recognition between free modern individuals influenced by modern natural law theories such as Fichte's; (3) finally, he realized its shortcomings and overcame them to formulate his idea of community based on his own concept of recognition.

In this study we focus on the two texts of the period when Hegel began developing his concept of recognition theory and gradually moved away from the influence of Romanticism (from the end of (1) to (2)) – the *Natural Law* essay („*Über die wissenschaftlichen Behandlungsarten des Naturrechts*“) (1802) and *System of Ethical Life* (*System der Sittlichkeit*) (1802/1803).

- 1 On the development of Hegel's thought in Jena see K. Düsing, *Das Problem der Subjektivität in Hegels Logik: systematische und entwicklungsgeschichtliche Untersuchungen zum Prinzip des Idealismus und zur Dialektik* (Hegel-Studien, Beiheft 15) (Bonn: Bouvier, 1976); D. Henrich u. K. Düsing, *Hegel in Jena* (Hegel-Studien, Beiheft 20) (Bonn: Bouvier, 1980); L. Siep, *Anerkennung als Prinzip der praktischen Philosophie: Untersuchungen zu Hegels Jenaer Philosophie des Geistes* (Hamburg: Felix Meiner Verlag, 1979); L. Siep, *Der Weg der “Phänomenologie des Geistes”: ein einführender Kommentar zu Hegels “Differenzschrift” und zur “Phänomenologie des Geistes”* (Frankfurt am Main: Suhrkamp, 2000); H. Schnädelbach, *Hegels praktische Philosophie: ein Kommentar der Texte in der Reihenfolge ihrer Entstehung* (Frankfurt am Main: Suhrkamp, 2000).

1 The *Natural Law* Essay

This section deals with the theory of community in “The Scientific Ways of Treating Natural Law” (Natural Law essay), which is estimated to have been written in the summer or early fall of 1802 and in two consecutive parts (December 1802 and May 1803) of the *Kritisches Journal der Philosophie*.²

1.1 *The Ethical Organism*

In the Frankfurt period (1796–1798), which preceded the Jena period, the relationship between the entire community and the individual was considered a relationship between a larger whole, that is, “life” („*Leben*“) and the single living („*das Lebendige*“). In this case, it was “love” („*Liebe*“) which mediated the relationship among the living (the relationship among individuals). However, living cannot enter into a reciprocal relationship with the dead, the objective, or the positive (e.g., the law, institutions, etc.), where love is powerless. The only option available to the individual, in relation to the dead, was to either succumb to or escape the relationship of domination and subjugation.

The attempt to overcome such apolitical relations can be considered the starting point of Hegel’s Jena period. What was vaguely considered “life” in the Frankfurt period became more clearly defined and divided into different concepts in the Jena period. Among these, the community or communal thing (including its ethos) in the socio-philosophical sense is expressed by the term “*Sittlichkeit*” (ethical life) in the Jena period. In Hegel

2 In this section we especially refer to W. Bonsiepen, *Der Begriff der Negativität in den Jenaer Schriften Hegels* (Hamburg: Felix Meiner Verlag, 1977), SS. 21–31; M. Riedel, *Studien zu Hegels Rechtsphilosophie* (Frankfurt am Main: Suhrkamp, 1970), SS. 42–74; L. Siep, „Der Kampf um Anerkennung. Zu Hegels Auseinandersetzung mit Hobbes in den Jenaer Schriften“, *Hegel-Studien*, Band 9 (1974), SS. 155–207; Siep, *Anerkennung als Prinzip der praktischen Philosophie*, SS. 156–164; Schnädelbach, *Hegels praktische Philosophie*, SS. 11–75.

the usage of “*Sittlichkeit*” (ethical life) is firmly based on the meaning of its etymology, “*Sitte*” (habit or custom), and is clearly distinguished from “*Moralität*” (morality) in the inner life of the individual. In the Natural Law essay Hegel states the following:

We notice here too a linguistic allusion, [...] – namely that it is of the nature of absolute ethical life to be a universal or an *ethos*. This Greek word for ethical life, like the German one [*Sitte*], expresses this nature admirably, [...]. (NL. 112/*GW*4. 467)

In this way, Hegel implies a natural and social expansion beyond mere personal morality. Hegel's image of ethical life not only combines the interiority of morality in Kant's moral philosophy and the exteriority of law in Hobbes's and Fichte's natural law theory but also contains two elements lacking in both. The first is a modern society, including an economic sphere. The other is an organic community, wherein the whole is an organism and each individual is a limb of it. The word “ethical life” itself is found in Hegel's texts from early on; however, it is not until the Natural Law essay that it is used in Hegel's original sense with such rich connotations as described above.

In short, ethical life refers to a community's ideal state. In such a community, the individual is a part and an organ of the whole. However, the absolute freedom of the individual is realized in connection with the whole and the economic sphere is organically included in it. This view of ethical life is maintained in the late Hegel's view of the community in the main. Clearly, Hegel's image of ethical life is complex with various aspects; thus, it looks quite different at different times, depending on which aspect comes out stronger.

The view of ethical life in the Natural Law essay is particularly marked by the aspect of the organic community. Hegel emphasized that the community is an ethical organism and the individual is a part of it. This may be partly for criticizing Fichte's theory of mechanical community, which is depicted as a machine based on the accumulation of atomistic individuals as parts.

In the Natural Law essay Hegel's emphasis on the organic unity of the entire community tends to make his argument rather holistic. It is even said that the individual can exist only by submitting to the whole and

that the individual becomes one with the whole only through service to the whole. This ultimately leads to self-sacrificial acts at the risk of death. Needless to say, this kind of thinking can be misinterpreted and misused in a totalitarian way.

[...] the individual proves his unity with the people unmistakably through the danger of death alone. (*NL*. 92/*GW*4. 449)

As will be discussed later, this tendency is because Hegel has not introduced the concept of recognition between individuals (horizontal recognition) into community theory. What brings about unity and harmony here is not recognition between different individuals but reconciliation brought about by the movement of ethical life itself.

[...] the absolute ethical order must organize itself completely as shape, [...] it eternally cancels its outward difference, and, feeding on and producing the inorganic, it calls forth from indifference a difference or relation to an inorganic nature, and in turn cancels that relation and consumes that nature as it consumes itself. (*NL*. 97f./*GW*4. 453f)

What we see here is the same type of concept as that of the Frankfurt period, that is, “reconciliation with fate through love.” Basically, it is the ontology of “life” that life as a whole can double itself and thus bring about the reunification of the double.

However, for Hegel, in the Jena period “difference” or the “inorganic” was not an abstraction such as the “dead” in the Frankfurt period. What it meant, basically, was the “economic.”

1.2 *The “Economic”: Relative Ethical Life*

Hegel was acutely aware of the importance and contradictions of the modern economic system by studying national economics since the end of the Frankfurt period.³ For him, including it in the ethical community

3 For more on Hegel’s study in economics see N. Waszek, *The Scottish Enlightenment and Hegel’s Account of “Civil Society”* (Dordrecht: Kluwer, 1988), especially

was imperative. In the Frankfurt era, the only way for a “beautiful soul” to protect its purity was to escape the sphere of possession and rights.

It is precisely the renunciation of rights through love that brings reconciliation with fate. In contrast, in the Natural law essay of the Jena period Hegel sought a way to encompass it in an ethical life rather than escape from it, despite being aware of the negative view that economic aspects damage ethical life.

[...] it is necessary that this system [=system of property and law] be consciously adopted, recognized in its rightfulness, [...]. (NL. 102f./GW4. 457f)

Hegel calls this system “relative ethical life” („*relative Sittlichkeit*“) and distinguishes it from “absolute ethical life” („*absolute Sittlichkeit*“) which refers to the entire ethical community. The former was later called the “system of need” („*System des Bedürfnisses*“) in the *System of Ethical Life*. Hegel acknowledges the positive aspect of the relative ethical life (system of need) wherein modern labor motivated by desire can weave a social network through the division of labor and exchange. Individuals are driven by their own individual needs; however, simultaneously, their needs are connected to the needs of others. It is a “system of universal mutual dependence” (NL. 94/GW4.450). But this universality, in contrast, is only relative and formal. It can even be a threat to the organic cohesion of ethical life.

Therefore, the final question is how absolute ethical life can suppress the negative aspects of relative ethical life (concentration of wealth, increasing inequality, the formation of master-slave relationships, etc.), basically, how the organic whole can be reconciled with its inorganic part.

1.3 *The Tragedy of Ethical Life*

In the Natural Law essay absolute ethical life is considered to struggle against and eventually reconcile with relative ethical life, which is “alien” and “inorganic” to itself. This reconciliation must be included in the

Chapter 3 and H.-C. S. am. Busch, *Hegels Begriff der Arbeit* (Berlin: Akademie Verlag, 2009).

self-movement of absolute ethical life. Hegel concludes the section describing the relationship between absolute and relative ethical life as follows:

This reconciliation lies precisely in the knowledge of necessity, and in the right which [absolute] ethical life concedes to its inorganic nature [=relative ethical life], and to the subterranean powers by making over and sacrificing to them one part of itself. For the force of the sacrifice lies in facing and objectifying the involvement with the inorganic. [...] the living [=absolute ethical life], by placing into the inorganic what it knows to be a part of itself and surrendering it to death, has all at once recognized the right of the inorganic and cleansed itself of it. (*NL. 104/GW4.458*)

The concept here has an aspect of “reconciliation with fate through love” as developed in Frankfurt’s essay “The Spirit of Christianity and Its Fate.” The relation between “absolute ethical life” and “relative ethical life” is also rephrased here as the relation between “the living” and “the inorganic,” following the terminology of the Frankfurt period. However, what is different is that, in the Natural Law essay, the subject of reconciliation is not a man or God but two ethical lives. Essentially, reconciliation here does not suddenly occur between the individual and the whole as it did in the Frankfurt period. However, it remains organized structurally, so to speak, between the community’s two social spheres. Hegel wrote about this phenomenon as follows:

This is nothing else but the performance, on the ethical plane, of the tragedy which the Absolute eternally enacts with itself, by eternally giving birth to itself into objectivity, submitting in this objective form to suffering and death, and rising from its ashes into glory. (*ibid.*)

As you can surmise from the word “tragedy” here, Hegel borrows the idea of Greek tragedy as a model for the process of reconciliation. Specifically, what is in mind here is the structure of Aeschylus’s tragedy *The Eumenides*.

The theme is that the struggle between Apollo, Orestes, and the Erinyes is reconciled through the mediation of the goddess Athena. Once enraged and threatening to bring misfortune, the Erinyes were only pacified and reconciled by the promise of giving them an altar in the polis (at the foot

of the Areopagus Hill) and make them into the patron god Eumenides. In the same way, absolute ethical life is considered reconciled not by perpetually struggling with that which is alien to it but by separating it from itself and then recognizing it as its own fate, that is, as a part of itself.

Tragedy consists in this, that ethical nature segregates its inorganic nature (in order not to become embroiled in it), as a fate, and places it outside itself; and by recognizing this fate in the struggle against it, ethical nature is reconciled with the Divine being as the unity of both. (*NL*. 105/*GW*4. 459)

Recognition and reconciliation here are drawn from the Greek tragic idea mentioned above. Simultaneously, it overlaps with the Christian concept of reconciliation based on Passion. Basically, the narrative of reconciliation developed in the quoted part has a structure similar to that of reconciliation with the fate of Jesus in "The Spirit of Christianity and Its Fate," a work written in the Frankfurt period, as mentioned earlier. Essentially, Hegel uses almost the exact phrase as the narrative that Jesus achieved reconciliation by separating and opposing "the dead" (the Jewish society and the rule of law hostile to Jesus) from him and accepting the fate of persecution by "the dead."⁴

Although the term "recognize" (*„anerkennen“*) is used here, it is not the same as the concept of recognition established after the late Jena period, that is, the social act of mutual recognition of identity among independent individuals. The meaning of the term "recognition" here is somewhat similar to reconciliation or at least something that forms part of reconciliation. Moreover, this is the case for the entire usage of the word recognition (*Anerkennung*)/to recognize (*anerkennen*) in the entire Natural Law essay.

In any case, the subject of reconciliation is not an individual, but the two communities, that is, relative and absolute ethical life. In contrast, the consciousness and actions of the individual, the part of the community, are treated only as secondary factors in a limited way. The "second thing is the irrelevancy that, as the real, this essence shall be related to that consciousness merely as its empirical consciousness" (*NL*. 108/*GW*4. 462).

4 Cf. *TW*. I. 347ff.

Nevertheless, this does not mean that individual consciousness and action do not work within relative ethical life and contribute to the reconciliation between the two ethical lives. First, through fear, trust, and obedience, and, second, through religion, individuals relativize their individuality. This facilitates the assimilation of relative ethical life into absolute ethical life.

In its real consciousness, it is one with the Absolute through fear, trust, and obedience, while in its ideal consciousness it is wholly united with the Absolute in religion, the God of the community, and his service. (*NL*. 109/*GW*4. 462)

However, limits exist in solving modern society's various problems with this model. Despite Hegel's sincere acceptance of the reality of modern society (especially its economic reality), his vision of reconciliation from the discord and conflict there lacks reality. This is because an internal analysis of relative ethical life itself and consideration of its intrinsic relation to absolute ethical life are still insufficient here and remain abstract. Ultimately, the problem with the Natural Law essay is that the socio-philosophical concept of recognition has not yet been established and separated from the religious image of reconciliation conceived under Greek tragic (or Christian) representations. Particularly, the lack of recognition between individuals is fatal and here Hegel is only discussing reconciliation without ethical life, so to speak.

2 The *System of Ethical Life*

Hegel's manuscript named *System of Ethical Life* (*System der Sittlichkeit*) by Rosenkranz is estimated to have been written in the fall or winter of 1802/1803, shortly after the Natural Law essay.⁵ This is said to be the first

5 In this section we especially refer to Bonsiepen, *Der Begriff der Negativität in den Jenaer Schriften Hegels*, SS. 21–31; H. Kimmeler, *Das Problem der Abgeschlossenheit des Denkens. Hegels „System der Philosophie“ in den Jahren 1800–1804* (Hegel-Studien, Beiheft 8) (Bonn: Bouvier, 1970), SS. 215–243; K. R. Meist, „Einleitung“,

systematic statement of Hegel's spiritual philosophy. This is probably the first time that "recognition" has been emphasized as a socio-philosophical concept of action and institutions⁶ and has been consciously differentiated from "reconciliation" in terminology. Although it is more immature than the late Jena's concept of recognition and more heavily influenced by Fichte, it remains an independent socio-philosophical concept, separate from the Christian or Greek tragic representations of reconciliation, as described above. Schelling's and Hegel's mutual influence was most vital in the period in which this work was written. In the *System of Ethical Life* the systematic construction method itself was probably conceived under the strong influence of Schelling of the identity philosophy period. In this method, the triad of "subsumption of concepts under intuition," "subsumption of intuition under concepts," and "indifference of subsumption of intuition and subsumption of concepts" are combined to raise the level of potency (*Potenz*). While borrowing from Schelling's methodology, this work attempts to develop Hegel's own socio-philosophical ideas not found in Schelling. Hence many places where the structure of the argument breaks down, forcing the concrete socio-philosophical contents to be applied to the formal triad above. It is not surprising that the work was never completed and that Schelling's method of systematization was never used again in Hegel's system.

The entire *System of Ethical Life* is divided into three parts as follows.

The first part, "Absolute Ethical Life on the Basis of Relation" (natural ethical life), discusses society before the establishment of absolute ethical life (the state). It is important to note that the society of Hegel's own time, modern civil society, along with its various contradictions,

in G. W. F. Hegel, *System der Sittlichkeit: Kritik des Fichteschen Naturrechts*, hrsg. v. H. D. Brandt (Hamburg: Felix Meiner Verlag, 2002), SS. IX–XXXIX; Riedel, *Studien zu Hegels Rechtsphilosophie*, SS. 75–99; S. Schmidt, *Hegels "System der Sittlichkeit"* (Berlin: Akademie Verlag, 2007); Schnädelbach, *Hegels praktische Philosophie*, SS. 76–116; W. C. Zimmerli, "Schelling in Hegel. Zur Potenzenmethodik in Hegels System der Sittlichkeit", in L. Hasler (Hrsg.), *Schelling. Seine Bedeutung für eine Philosophie der Natur und der Geschichte* (Stuttgart-Bad Cannstatt: Frommann-Holzboog, 1981), SS. 255–278.

6 See Siep, "Der Kampf um Anerkennung", S. 20.

is kept in mind. Here the system of need (economic system) and the system of law and politics under it are discussed more explicitly than in the Natural Law essay. Part 1 is further divided into two parts. Part 1-A, "First Level of Nature, Feeling as Subsumption of Concept under Intuition," elucidates the structure of the most fundamental relationship, the relationship of individual-object or individual-individual, which is the community's most fundamental basis. This relationship is also a preliminary stage of recognition. Part 1-B, "Second Level of Infinity and Ideality in Form or relation," discusses the economic-legal system and the relationship of the individual within it. Social recognition plays an important role in this context.

The second part, "the Negative or Freedom or Transgression," depicts the collapse of the system of need from within and its transition to the state. The reaction to the various contradictions in society, as presented in the first part, gives rise to an anarchy that disrupts the order. At the peak of this chaos, an absolute ethical life is established.

In the third part, "Ethical Life," Hegel attempts to envision an ideal community (absolute ethical life) wherein the individual is a part of the whole but can still realize his/her freedom and thereby contribute to it entirely.

2.1 *Love, Education, and Labor (Part 1-A)*

In this first stage of natural ethical life recognition itself has not yet appeared. In the *System of Ethical Life* recognition is limited to the recognition of property between legal personalities. As it is established in the system of economy and law of the whole society, we must read Part 1-B for its consideration. Here only the precursor form of recognition, "love" (*Liebe*), is discussed. Love first arises between two individuals. "[...] each intuitively himself in the other, though as a stranger, and this is love" (*SE*, 110/*GW*5, 289).

Here we see the same type of structure as the basic structure of recognition, which is being oneself in otherness. Still, it is not yet socially established as a relationship between personality traits. The emotion of love,

being an emotion, is instantaneous, accidental, and subjective. Therefore, it remains involved in the nature of the body.

The inconceivability of this being of oneself in another belongs therefore to nature, and not to ethical life. (*ibid.*)

However, in producing the child, the union of two individuals is objectively maintained and socially recognized. This is the first step for each individual to become a social and communal being, and it forms the basis for recognition.

“Formative education” (*Bildung*) (*SE*. 111/*GW*. 5. 290) is what must be done to make the individual a social being. Essentially, parents lead their children to a higher level of individuality, or “adulthood,” through education. In the *System of Ethical Life* this process occurs only within a family and, in that sense, it is not directly social. However, it is the first step for an individual to form him- or herself into a communal being through communication with “others.”

However, in fact, this is the only place in the *System of Ethical Life* where formative education (*Bildung*) is mentioned, and it no longer appears in the sphere of social and communal recognition (1-B), as do “love,” “child,” “tool,” and “speech.” This is a problem with the *System of Ethical Life*.⁷ Basically, no model for individuals of equal status to form each other exists, as education is unilaterally conducted within the family and only as education by parents to children. Therefore, one of the reasons why the structure of recognition in 1-B is fixed and static, without a formation process, is the narrowness of the concept of education/cultivation here. Here “labor” (*Arbeit*) is examined by focusing only on the relationship between the subject and the object of the labor and excluding the relationship to the labor of others. Therefore, the relationship between labor and recognition is not directly discussed here. However, labor is essentially the first step for individuals as labor subjects to be incorporated into the network of the

7 In the *Phenomenology of Spirit*, for example, formative education (*Bildung*) is discussed as an act of developing the individual into a social being through labor and mutual recognition or, in a broader social experience, and is inseparable from social recognition.

division of labor and the exchange and the system of law, which opens the ground for recognition. Nonetheless, as we have seen above, labor in the *System of Ethical Life* is not related to the formative education/cultivation of the subject of labor. This is why recognition in 1-B is limited to a fixed and limited recognition of the possession of the result of labor.

2.2 *Legal Recognition and Its Limits: From Part 1-B to Part 2*

In this section the relationship between the individual and the system, established on the basis of the individual-level relationships (individual-object, individual-individual) described in 1-A, is discussed in its entirety. Moreover, “recognition” is explicitly argued here for the first time in the *System of Ethical Life*. The relationship between the whole and the individual here is what was called the “system of universal mutual dependence” (*NL*. 94/*GW*4.450) in the Natural Law essay.⁸ Furthermore, it is expressed in the form of the economic-mutual-dependence-relationship based on the division of labor and exchange, that is, the “system of need” (*System des Bedürfnisses*) (*SE*. 167/*GW*5. 350), and the legal-mutual recognition relationship between various personalities with ownership rights.

In such a relationship recognition is established in a structure wherein individuals recognize each other’s personality as the subject of property rights mediated by possessions and guaranteed by law. Simultaneously, the subject of recognition and the mediator of recognition also evolve from the perspective of 1-A, that is, from the individual to the person, from possession (*Besitz*) to property (*Eigentum*).

Property enters reality through the plurality of persons involved in exchange and mutually recognizing one another. (*SE*. 121/*GW*5. 301)

The subject is [not] simply determined as a possessor, but is taken up into the form of universality; he is a single individual with a bearing on others and universally negative as a possessor recognized as such by others. [...] In this respect possession is property. (*SE*. 118/*GW*5. 298, [] by the editor)

8 See Section 1.2 of this chapter.

This is the concept of recognition in the *System of Ethical Life*. Here recognition is only a fixed legal relationship negotiated over the possession of the “result” of labor. Recognition here is not directly connected to individual labor or mutual action itself.

Such recognition, and the bearer of recognition, is merely formal. Therefore, there is always a risk that it can easily fail. Basically, “the possibility of non-recognition and nonfreedom” exists (*SE*. 124f./*GW*5. 305). Even if legal ownership rights are formally recognized and equality proclaimed, guaranteeing actual economic equality is futile.

At this [level] a living individual confronts a living individual, but their power (*Potenz*) of life is unequal. (*SE*. 125/*GW*5. 305)

Poverty and neediness exist even under legal equality in our society today. Thus, on the other side of an ostensibly legally equal society, there is economic inequality and a “relation of lordship and bondage” (*ibid.*). At the end of 1-B Hegel certainly sees the possibility of natural unity within the family, as labor and possession are shared there; however, this has nothing to do with social recognition in civil society. Outside of the family, that is, in civil society, the relationship between individuals and the relationship between the social system and the individual continues to be fraught with conflict. Although not explicitly highlighted, the failure of Adam Smith’s principle of autonomous equilibrium in the market (“God’s invisible hand”) and the resulting alienation of labor and poverty are assumed to be behind this. Civil society here is on the verge of catastrophe, as we will see in the second part.

In summary, in Part 1, a certain level of recognition is achieved, and external and formal freedom and equality are established. However, the first part ends without the establishment of an ethical community. Part 2, “the Negative or Freedom or Transgression,” describes the process of internal collapse of the formal order of civil society examined in Part 1. Throughout Part 1 individuals would eventually come to feel that the relationship between freedom, equality and recognition in civil society is only a sham. There freedom turns into unfreedom and equality turns into inequality. In search of freedom from this inevitable system of oppression, the individual turns to the negation of the other. This means the violation of the other’s

possessions, personality, life, etc., and appears concretely in the form of “Crime” (*Verbrechen*), “Struggle” (*Kampf*), and “War” (*Krieg*).

Overall, Part 2 shows the limits of the state of identity reached in Part 1 and depicts its internal collapse or self-denial. Still, how absolute ethical life (the state or ethical community) emerges from such a denial and resolves the contradictions is not discussed in the entire work. Part 3, “Ethical Life,” begins abruptly with a description of a state in which absolute ethical life has already been established.

2.3 *Ethical Life without Recognition (Part 3)*

The image of the state, developed at the beginning of Part 3, is that of absolute ethical life:

[...] in [absolute] ethical life the individual exists in an eternal mode; his empirical being and doing is something downright universal. (*SE*. 143/*GW*5. 325)

Since the people is a living indifference, and all natural difference is nullified, the individual intuits himself as himself in every other individual; he reaches supreme subject-objectivity; and identity of all is just for this reason not an abstract one, not an equality of citizenship, but an absolute one [...] The universal, the spirit, is in each man and for the apprehension of each man, even so far as he is a single individual. (*SE*. 144/*GW*5. 325f.)

Here absolute ethical life is depicted as an ideal community wherein individuals can fully express their individuality while simultaneously maintaining harmony with the entire community. Only in such a community can true freedom and communality of people be achieved beyond the legal formalities of freedom and equality.

However, as we have already mentioned, how such a state can be established through any process from civil society is not discussed. Moreover, as seen in the first part, how a state can encompass civil society that contains various contradictions is not discussed.

Specifically, absolute ethical life is an organic whole depending on three classes: first class, ruler; second class, merchant; and third class, peasant. As can be seen from the fact that each class corresponds to the classical

categories of virtue – courage, discipline, and trust – the third part depicts an ancient social image modeled on the Greek polis. In this sense, the third part of the book does not sufficiently address and solve the problems of the modern era addressed in the first two parts. The status of natural ethical life in the first part is confirmed to be incorporated into absolute ethical life as a class – specifically, the second class – and forms part of it as a system of needs. However, the third part does not provide effective solutions to the contradictions that have already been highlighted. The establishment of a kind of professional union system, economic policies such as government intervention in the market, and others are mentioned; however, all of them are insufficient. This is probably the reason why the third part was abandoned in the middle of the book and the *System of Ethical Life* is unfinished.

3 Conclusion

We conclude that one of the reasons for the incompleteness of the *System of Ethical Life* is the immaturity of its recognition concept. It was a static, fixed, legal recognition learned from Fichte's natural law theory. It is common in enlightenment natural law thought, wherein the self recognizes others as legal persons and, in return for recognition of their rights, the self is also recognized by others.

It can be a guideline for "behaving legally" in accordance with the already established legal system. However, it cannot be a principle for weaving a state of absolute ethical life wherein the whole and the individual are in harmony beyond mere civil equality. Therefore, in the *System of Ethical Life* the questions of how to relate the situation of Part 3 to the actions of individuals living in actual civil society and what is the practical principle that permeates the individual, civil society, and the state are not answered. There is only recognition without reconciliation.

This frustration led Hegel to search for a new, systematic concept. The answer to this led Hegel to write the *Phenomenology of Spirit* (1807), which was written after the *Philosophy of Spirit* (1803/1804 and 1805/1806).

Therefore, in order to follow up on how Hegel answered these questions, we need a new discussion, which is beyond the scope of this chapter.

4 Abbreviations

Hegel, G. W. F., *Gesammelte Werke*, in Verbindung mit der Deutschen Forschungsgemeinschaft, hrsg. von Nordrhein-Westfälischen Akademie der Wissenschaften (Hamburg: Felix Meiner Verlag, 1968ff) [= *GW*];

——, *Werke in zwanzig Bänden*, Theorie Werkausgabe, Redaktion E. Moldenhauer und K. M. Michel (Frankfurt am Main: Suhrkamp, 1970ff) [= *TW*];

——, *Gesammelte Werke*, hrsg. v. H. Buchner u. O. Pöggeler, Bd. 4: *Jenaer Kritische Schriften* (Hamburg: Felix Meiner Verlag, 1969) [= *GW*. 4];

——, *Gesammelte Werke*, hrsg. v. M. Baum u. K. R. Meist, Bd. 5: *Schriften und Entwürfe* (Hamburg: Felix Meiner Verlag, 1998) [= *GW*. 5];

——, *Natural Law: The Scientific Ways of Treating Natural Law, Its Place in Moral Philosophy, and Its Relation to the Positive Sciences of Law*, trans. by T. M. Knox (Philadelphia, Pennsylvania: University of Pennsylvania Press, 1975) [= *NL*];

——, *System of Ethical Life (1802/3) and First Philosophy of Spirit* (part iii of the System of speculative philosophy 1803/4), trans. by H. S. Harris and T. M. Knox (Albany, NY: State University of New York Press, 1979) [= *SE*].

2 The Structure and Argument of Hegel's *Philosophy of Right*

1 Introduction

Over the centuries political thinkers have advanced theories of the state. A *theory* of the state usually presents a blueprint for or a model of a state. Thus, for example, Plato provided a model of the just state in his *Republic*.¹ Aristotle designed a model of the best (ideal) state in Books VII and VIII of his *Politics*.² Hobbes offered a model of a strong state in *Leviathan*; for Hobbes, the state ought to be absolute in order to prevent social strife.³ Locke presented a model of limited government, to be overthrown by the people if it does not fulfill its task.⁴ And Rousseau laid out a blueprint for a small democratic state.⁵

My contention is that Hegel did not put forth a *theory* of the state in this sense. In the *Philosophy of Right*, which is his mature political philosophy and was published in 1821, Hegel articulates philosophically the

1 Plato, *Respublica*, ed. S. R. Slings (Oxford: Oxford University Press, 2003).

2 Aristotelis, *Politica*, ed. D. Ross (Oxford: Oxford University Press, 1963), Books VII and VIII.

3 T. Hobbes, *Leviathan*, ed. R. Tuck (Cambridge, New York and Victoria: Cambridge University Press 1991).

4 J. Locke, "The Second Treatise of Government," in his *Two Treatises of Government*, edited with an introduction and notes by P. Laslett (Cambridge, New York and Victoria: Cambridge University Press, 1988, 1992 reprint), pp. 265–428.

5 J.-J. Rousseau, "Du Contrat Social," in J.-J. Rousseau, *Du Contrat Social précédé de Discours sur l' Économie Politique et de Du Contrat Social (première version) et suivi de Fragments Politiques*, texte établi, présenté et annoté par R. Derathé (Paris: Gallimard, 1964), pp. 169–292.

nature of the modern state. Rather than constructing a model of a state, he renders explicit the principles immanent in the notion of the state.

Nevertheless, much more is involved in the *Philosophy of Right* than an account of the state. Not least, the *Philosophy of Right* exemplifies Hegel's philosophical approach. According to this philosophical approach, Hegel starts from a most basic concept and renders explicit its implications until its contradictions or inadequacies come to the fore. These contradictions or inadequacies point to a new concept which resolves the contradictions and is more adequate than the previous one. Hegel renders explicit the implications of this new concept until its contradictions or inadequacies too come to the surface. These contradictions or inadequacies point to a further concept and so on until a concept is reached which is all-comprehensive. Importantly, this all-comprehensive concept includes all the previous ones as its "moments" or aspects.

A debate in Hegel scholarship has been whether the *Philosophy of Right* should be read in light of Hegel's philosophical system. The debate was initiated by Thom Brooks, who distinguished between "systematic" and "non-systematic" readings of the *Philosophy of Right*. A "systematic" reading views a Hegel's work within the context of his larger philosophical system, whereas a "non-systematic" reading views a single work apart from the larger Hegelian philosophical system.⁶ Brooks claims that his reading of the *Philosophy of Right* is "systematic," in contradistinction to the "non-systematic" readings of Paul Franco, Frederick Neuhouser, Michael Hardimon, Dudley Knowles, Alan Patten, Steven Smith, Peter Steinberger, Charles Taylor, and Allen Wood, amongst others.⁷ At the end of his book Brooks tells us that "A principal target throughout has been Allen Wood's influential non-systematic reading of the *Philosophy of Right* in his *Hegel's Ethical Thought*."⁸ Brooks's thesis occasioned the response of Paul Redding, Michael Rosen and Allen Wood himself, while

6 T. Brooks, *Hegel's Political Philosophy: A Systematic Reading of the Philosophy of Right* (Edinburgh: Edinburgh University Press, 2009), p. 3.

7 *Ibid.*, pp. 5–6.

8 *Ibid.*, p. 129.

Brooks replied to all three of them.⁹ Allen Wood had insisted in his introduction to his book-length study that there is much in the *Philosophy of Right* “that does not depend on the obscurities and sophistries of Hegel’s speculative logic of thought-determinations.”¹⁰ Significantly, he claimed that his own *Hegel’s Ethical Thought* is actually “quite a bit more ‘systematic’ than Brooks’ own,” since the Parts of his book “correspond exactly to Hegel’s systematic divisions.”¹¹ Here Wood is referring to a systematicity that is *internal* to the *Philosophy of Right* itself, a systematicity to which Brooks himself appeals in his discussion of property and punishment in his book.¹² Thom Brooks continued this debate by co-editing with Sebastian Stein *Hegel’s Political Philosophy: On the Normative Significance of Method and System*,¹³ to which Paul Redding and Allen Wood also contributed. In this connection, I find Michael Nance’s distinction between “internal-systematicity” and “external-systematicity” useful: “An internal-systematic reading adheres closely to the internal structure and argumentation of the *Philosophy of Right*, while an external systematic reading brings in considerations from the *Logic*.” Therefore, Wood’s reading is “internal-systematic,” while Brooks’s “external-systematic.”¹⁴ Although I do not wish to argue that Hegel’s philosophical system is questionable¹⁵ or dead,¹⁶ I believe that an “internal-systematic” reading is valuable and not less faithful to Hegel.

9 P. Redding, “Thom Brooks’s Project of a Systematic Reading of Hegel’s *Philosophy of Right*,” *Bulletin of the Hegel Society of Great Britain*, vol. 66 (2012), pp. 1–9; M. Rosen, “The Ruined Castle,” *Bulletin of the Hegel Society of Great Britain*, vol. 66 (2012), pp. 10–15; A. Wood, “Thom Brooks and the ‘Systematic’ Reading of Hegel,” *Bulletin of the Hegel Society of Great Britain*, vol. 66 (2012), pp. 16–22; T. Brooks, “Reply to Redding, Rosen and Wood,” *Bulletin of the Hegel Society of Great Britain*, vol. 66 (2012), pp. 23–35.

10 Wood, “Thom Brooks and the ‘Systematic’ Reading of Hegel,” p. 21.

11 *Ibid.*, p. 18.

12 Redding, “Thom Brooks’s Project,” p. 2.

13 T. Brooks and S. Stein (eds), *Hegel’s Political Philosophy: On the Normative Significance of Method and System* (Oxford: Oxford University Press, 2017).

14 M. Nance, “Hegel’s Social and Political Philosophy: Recent Debates,” *Philosophy Compass*, vol. 11, Issue 12 (2016), p. 807.

15 A. Wood, *Hegel’s Ethical Thought* (Cambridge: Cambridge University Press, 1990), introduction and “Thom Brooks and the ‘Systematic’ Reading of Hegel.”

16 Rosen, “The Ruined Castle.”

In this chapter, I shall analyze the structure and argument of Hegel's major work on political philosophy, attending to its *internal* systematicity. The state will prove to be the creation of the individual will. The argument of the *Philosophy of Right* takes the form of a development, where each stage arises out of the contradictions or inadequacies of the previous one. The state is the highest stage within "Ethical Life," which develops out of the contradictions or inadequacies of successively "Abstract Right" and "Morality."

2 The Science of Right

The *Philosophy of Right* is concerned with the "Idea of right" („*Idee des Rechts*"), that is, "the concept of right" („*Begriff des Rechts*") along with its "actualization" („*Verwirklichung*").¹⁷ What does it mean that a "concept" *actualizes* itself? We can appreciate better what it means by looking at one of Hegel's nicest metaphors, taken from the preface of the *Phenomenology of Spirit* (1807). There Hegel says that truth is like the "bud" which "disappears in the bursting-forth of the blossom, and one might say that the former is refuted by the latter; similarly, when the fruit appears, the blossom is shown up in its turn as a false manifestation of the plant, and the fruit now emerges as the truth of it instead." Crucially: "These forms are not just distinguished from one another, they also supplant one another as mutually incompatible. Yet at the same time their fluid nature makes them *moments of an organic unity* in which they not only do not conflict, but in which each is as necessary as the other; and this *mutual*

17 Citations are from G. W. F. Hegel, *Hegel's Philosophy of Right*, trans. with notes by T. M. Knox (London, Oxford and New York: Oxford University Press, 1967) – hereafter referred to as *PR*. Here *PR* §1. The paragraph numbers are the same in the German and the English texts. The German text used is G. W. F. Hegel, *Grundlinien der Philosophie des Rechts* (Hamburg: Felix Meiner Verlag, 1995).

necessity alone constitutes the life of the whole.”¹⁸ By “truth” Hegel does not mean some metaphysical entity or substance which is divorced from human affairs and hence incomprehensible to humans. Rather, he means something very concrete; truth is reality, understood as the dialectical interrelationship of theory and practice, of the subjective and objective worlds. According to Hegel, at different historical epochs humans comprehend reality differently. Importantly, human comprehension becomes more adequate as history progresses. Hegel says: “The result is the same as the beginning, only because the *beginning* is the *purpose*; in other words, the actual is the same as its Notion only because the immediate, as purpose, contains the self or pure actuality within itself.”¹⁹ At the beginning something exists in its “notion” or “concept” („*Begriff*”). But a thing’s “notion” or “concept” is its *potentiality*, that is, its ability to develop and actualize itself. What forces the concept to actualize itself is “the *negative*,”²⁰ an inner necessity. Hegel terms the fully developed or actualized concept “Idea.” There is an Aristotelian influence on all this.²¹ For Aristotle, every living being carries *within* it the δύναμις (*dynamis*) or *potentiality* to achieve its *telos*. This is what he called ἐντελέχεια (*entelecheia*).

The *Philosophy of Right*, as the “science of right,” is “a section of philosophy.” Accordingly, it develops “the Idea” out of the concept, to wit, it follows the “immanent development of the thing itself.”²² According to Hegel, the “concept of right” is the “free will.”²³ The argument of the *Philosophy of Right* is so structured that social and political institutions will prove to be the creation of the individual will. As Pelczynski has argued,

18 G. W. F. Hegel, *Phänomenologie des Geistes* (Hamburg: Felix Meiner Verlag, 1988) – hereafter *PhG*, S. 4; quoted from G. W. F. Hegel, *Hegel's Phenomenology of Spirit*, trans. by A. V. Miller (Oxford: Oxford University Press, 1977) – hereafter *PhS*, p. 2.

19 *PhG*, S. 17; *PhS*, p. 12.

20 *PhG*, S. 28; *PhS*, p. 21.

21 “Still, in the sense in which Aristotle, too, defines Nature as purposive activity, purpose is what is immediate and *at rest*, the unmoved which is also *self-moving*, and as such is Subject.” (*PhG*, S. 16; cited from *PhS*, p. 12) For Aristotle’s influence on Hegel see A. Ferrarin, *Hegel and Aristotle* (Cambridge: Cambridge University Press, 2001).

22 *PR* §2.

23 *PR* §4.

“Hegel tries to come to terms with the truth of Rousseau’s – and Kant’s – moral position – the concept of an autonomous subject whose essential freedom consists in not being forced to accept anything as valid unless his conscience, will and reason have given consent to it”²⁴ For Westphal, “the main issue is what is required for a will to achieve its freedom.” In the introduction Hegel mentions “two basic requirements for achieving freedom,” namely, achieving one’s goals and acting voluntarily. In Hegel “voluntary” has both the Aristotelian sense of not regretting one’s act after one witnesses its consequences and the Kantian sense of autonomy. The principal question of Hegel’s analysis is, therefore: “What sort of action, in what sort of context, constitutes this kind of free action?”²⁵

The *Philosophy of Right* consists of three parts, namely, “Abstract Right,” “Morality,” and “Ethical Life.” These should be understood as “moments” or aspects of the whole. “Ethical Life” – and within it the state – is the whole within which the earlier parts of the book should be understood. The development from “Abstract Right” through “Morality” to “Ethical Life” is logical. Hegel’s purpose is to demonstrate that “Ethical Life” is *presupposed* by “Abstract Right” and “Morality”; it is their determining ground. In other words, “Abstract Right” and “Morality” do not make sense outside the context of “Ethical Life.” Rather than positing “Ethical Life” in a *priori* manner, Hegel presents it as arising out of the contradictions and inadequacies inherent in “Abstract Right” and “Morality.” Thus, we are witnessing the development of a simple conception of right through a more adequate understanding in “Morality” to a still more adequate understanding in the ethical social and political order (“Ethical Life”). The point Hegel wishes to make is that the state – as the highest “moment” of “Ethical Life” – provides the context within which right and morality make sense. For Hegel, legal relationships and moral rules are not universal, timeless, and ahistorical.

24 Z. A. Pelczynski, “Political Community and Individual Freedom in Hegel’s *Philosophy of State*,” in Z. A. Pelczynski (ed.), *The State and Civil Society: Studies in Hegel’s Political Philosophy* (Cambridge, London, New York, New Rochelle, Melbourne and Sydney: Cambridge University Press, 1984, 2009 reprint), p. 60.

25 K. Westphal, “The Basic Context and Structure of Hegel’s *Philosophy of Right*,” in F. C. Beiser (ed.), *The Cambridge Companion to Hegel* (Cambridge, New York and Melbourne: Cambridge University Press, 1993, 1996 reprint), p. 246.

Rather, they exist (and make sense) within the context of a state at a given time in history. It is a philosophical articulation of the modern European state that Hegel offers in the *Philosophy of Right*.

In what follows I shall discuss each of the three foregoing parts of the *Philosophy of Right* in turn, analyzing what is at stake in each one of them and pointing out the contradictions or inadequacies which lead on to the next stage.

3 Abstract Right

The section on "Abstract Right" has three subsections: (i) property, (ii) contract, and (iii) wrong. Here Hegel articulates the implications of the notion of the "absolutely free will."²⁶ This free will is in its immediacy; it simply exists. At this stage it is *undetermined* and, hence, abstract. It is "personality" conceived in abstraction, as simple "self-relation."²⁷ But a person "must translate his freedom" into the external world in order to make his existence objective.²⁸ Thus, he externalizes his will into "a thing."²⁹ The importance of property lies in that it allows the will to actualize itself; in it the will is an object to itself and thereby "actual."³⁰ Also, "... property is the first embodiment of freedom"³¹ Since "the will of a person" becomes objective to the person concerned in property, property is private.³² Property has three "modifications": (a) "*taking possession*," (b) "*use*," and (c) "*alienation*."³³ In the contract the will of a person is recognized by another. The contract is important because it expresses the mutual recognition of the contracting parties as property owners.³⁴

²⁶ PR §34.

²⁷ PR §35.

²⁸ PR §41.

²⁹ PR §42.

³⁰ PR §45.

³¹ PR note to §45.

³² PR §46.

³³ PR §53.

³⁴ PR §71.

However, the contract is an agreement of two “arbitrary” wills,³⁵ which while “posited” by the contracting parties “as common,” retain their particularity.³⁶ Moreover: “Because they are *immediate* persons, it is a matter of chance whether or not their particular wills actually correspond with the implicit will, although it is only through the former that the latter has its real existence.”³⁷ Hampsher-Monk notes that by “the implicit will” Hegel “means the aspiration towards a universally recognizable principle of right.”³⁸ The problem is made explicit in “wrong,” which is the negation of right. In “wrong” the will of a particular person comes “explicitly at variance with the universal, it assumes a way of looking at things and a volition which are capricious and fortuitous and comes on the scene in opposition to the principle of rightness.”³⁹ “Wrong” can take the form of an innocent clash of wills, fraud, and coercion.⁴⁰ In order to safeguard “will,” “right,” “property,” and “contract,” punishment becomes necessary. The significance of punishment lies, not only in the assertion of a given right (that which has been infringed), but in its assertion of the very principle of rightness: “Hence to injure [or penalize] this particular will as a will determinately existent is to annul the crime, which otherwise would have been held valid, and to restore the right.”⁴¹ Since the criminal acts within the sphere of rights, punishment “is not merely *implicitly* just”; “as just, it is *eo ipso* his implicit will, an embodiment of his freedom, his right.”⁴² In other words, the criminal is a person and as a person he claims rights. His freedom consists in the protection of rights. He, therefore, wills that criminals be punished; it is his right. At the same time, “it is also a right *established* within the criminal himself, i.e. in his objectively

35 PR §75.

36 PR §81.

37 *Ibid.*

38 I. Hampsher-Monk, *A History of Modern Political Thought: Major Political Thinkers from Hobbes to Marx* (Oxford and Cambridge, Massachusetts: Blackwell, 1992, 2001 reprint), p. 439.

39 PR §81.

40 PR §§84–86, 87–89, 90 ff, respectively.

41 PR §99.

42 PR §100.

embodied will, in his action."⁴³ This is because with his action the criminal "has laid down a law," that is, that it is all right to negate another person's rights. This law "he has explicitly recognized in his action"; therefore, he should be brought under it "as under his right."⁴⁴ The law the criminal has laid down should apply to himself. This is something that, as "a rational being,"⁴⁵ the criminal cannot reject.⁴⁶

In the sphere of "Abstract Right," punishment takes the form of "retribution."⁴⁷ It appears as "revenge" and "because it is a positive action of a particular will, becomes a new transgression." Hence its "contradictory" nature; it leads to "an infinite progression," that is, to an eternal feud, since the person punished takes revenge, which eventually leads to a vendetta: "... descends from one generation to another *ad infinitum*."⁴⁸ Says Hegel: "The demand that this contradiction [*Widerspruch*], which is present here in the manner in which wrong is annulled, be resolved ... is the demand for a justice freed from subjective interest and a subjective form and no longer contingent on might, i.e. it is the demand for justice not as revenge but as punishment."⁴⁹ In crime and punishment in the form of revenge the discordance of the "universal" (viz. social) and "single will" has come to the fore; but punishment, as the annulment of the crime, has signaled the return of the "universal will" to itself out of this opposition. Thus, right

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

46 Knowles claimed that Hegel's theory of punishment is "a very near miss." This is because "we are left with a conclusion that ... cannot serve to justify punishment: the claim that the criminal himself cannot complain if he is treated in roughly the way he has treated others." Knowles suggested that Hegel's aim could best have been served by an hypothetical social contract theory, but "Hegel's refusal to do so is explicit." He noted that Hegel "was confused." D. Knowles, "Hegel on the Justification of Punishment," in R. R. Williams (ed.), *Beyond Liberalism and Communitarianism: Studies in Hegel's Philosophy of Right* (Albany: State University of New York Press, 2001), p. 125. Cf. D. Knowles, *Hegel and the Philosophy of Right* (London and New York: Routledge, 2002), pp. 148–157.

47 *PR* §101.

48 *PR* §102.

49 *PR* §103.

has been re-asserted and the will has superseded “its implicit stage and the form of immediacy” in which it began; it has determined itself as “self-related negativity.”⁵⁰ The sphere of “Abstract Right” is inadequate because its principles are actualized in the positive legal system of civil society. More immediately, however, it is inadequate because it takes no account of inner motives. The “moment” of “Abstract Right” is superseded, in the double Hegelian sense of overcome and yet preserved, and passes over to the sphere of “Morality.”

4 Morality

“Morality” is an attempt to overcome the inadequacies of “Abstract Right.” It conceives of the same concepts and relationships in a more adequate manner. The section on “Morality” has three subsections: (i) purpose and responsibility, (ii) intention and welfare, and (iii) good and conscience. At this stage the will does not will a personal or private right only; rather, it wills the universal.⁵¹ It is self-reflective, the will of a subject.⁵² A subject has self-consciousness, while the moral will, as opposed to the abstract will, has the very principle of right in view and not only the notion of right, which is abstract. The standpoint of “Morality” is, accordingly, an advance over that of “Abstract Right.” Says Hegel: “The externalization of the subjective or moral will is action.”⁵³ Hence, in this section Hegel articulates what is involved in action. The “right of the moral will” has three “aspects” – purpose, intention, and good.⁵⁴ Hegel uses these categories in the usual sense; thus, purpose is a willingness to bring about a state of affairs and intention is what underlies the purpose (the motive). The “good” is “the unity of the concept of the will with the

50 *PR* §104.

51 *PR* §103.

52 *PR* §105.

53 *PR* §113.

54 *PR* §114.

particular will.”⁵⁵ Implicit in the notion of the “good” is both right and the welfare of others.⁵⁶

However, at the stage of “Morality” the only criterion of goodness is the subject. As the social and political framework is lacking, moral standards are subjective. Conduct is based on “conscience” alone. “Conscience” is one’s inner conviction that what one does is good; it is the “subjective self-consciousness” which knows “in itself and from within itself what is right and obligatory.” More importantly, it recognizes only what it knows as good and asserts that “whatever in this way it knows and wills is in truth right and obligatory.”⁵⁷ The inadequacy of the standpoint of “conscience” thus becomes apparent. As Hegel says: “The ambiguity in connexion with conscience lies therefore in this: it is presupposed to mean the *identity* of subjective knowing and willing with the true good, and so is claimed and recognized to be something sacrosanct; and yet at the same time, as the mere subjective reflection of self-consciousness into itself, it still claims for itself the title due, solely on the strength of its absolutely valid rational *content*, to that identity alone.”⁵⁸ As well as discussing the ethics of conscience, Hegel renders explicit the implications of Kantian morality.⁵⁹ In unmasking the contradictions implicit in the standpoint of “Morality,” Hegel is levelling a critique on Kant. The inadequacy of Kantian ethics is that it claimed to derive objective, universal standards of morality from the subjective will. However, there is nothing to determine between different sets of rules. Therefore, morality remains abstract, devoid of any specific content.⁶⁰ Ultimately, what gives morality a content is “Ethical Life.” Consequently, we are witnessing the transition from “Morality” („*Moralität*“) to “Ethical

55 PR §129.

56 PR §130.

57 PR note to §137.

58 *Ibid.*

59 See I. Kant, *Foundations of the Metaphysics of Morals*, 2nd rev. edn, trans. with an intro. by L. W. Beck, Library of Liberal Arts (New York: Macmillan, 1990).

60 Many commentators have noted that Hegel’s criticism of Kant is unjust. The complexity of Kant’s and Hegel’s arguments is great and the issue cannot be dealt within the confines of this chapter.

Life" („*Sittlichkeit*“). “Morality” too is superseded, in the double Hegelian sense of overcome and yet preserved.⁶¹

5 Ethical Life

“Ethical Life” has three “moments”: (i) the family (an immediate, unreflective unity), (ii) civil society (a formal unity, mediated by particularity), and (iii) the state (a reflective unity in difference). I shall discuss each of these “moments” in turn.

The family is an immediate, unreflective unity, because its members are bound together by sentimental ties, that is, love.⁶² Hegel gives an account

61 *PR* §141. See Ardis Collins for a discussion of Hegel’s treatment of Kantian ethics. Collins argues that in the *Philosophy of Right* “Hegel’s critique of a morality point of view belongs to the philosophical development of a concept, the concept of right Since Hegel’s philosophical procedure both justifies and criticizes, cancels and preserves, the positions it passes through, morality becomes integrated into Hegel’s own position.” A. B. Collins, “Hegel’s Critical Appropriation of Kantian Morality,” in Williams (ed.), *Beyond Liberalism and Communitarianism*, p. 21. Having discussed the Kant-Hegel debate (*ibid.*, pp. 21–22), she revisits it (*ibid.*, pp. 30–33) after examining Hegel’s philosophical procedure (*ibid.*, pp. 22–24). Collins notes that “Hegel’s idea of the good corresponds not to Kant’s moral law but to Kant’s notion of the highest good.” *Ibid.*, p. 32. “The real bone of contention between Kant and Hegel,” she maintains, “is whether the universal concept of a rational will is a sufficient condition for the rationality of real action” and, for Hegel, it is not. *Ibid.*, p. 32. In accordance with Hegel’s philosophical procedure, “ethical life must acknowledge a common ground that establishes the necessary connections” between the oppositions inherent in “Morality.” *Ibid.*, p. 33. Says Collins: “Hegel calls this principle the spirit of the nation or folk, which defines the way this society knows the good.” *Ibid.* The independence of the good is recognized in the “rule of law”; however, “ethical life” also effects “a necessary connection between the indeterminacy of universal law and the random diversity of independently determined life-plans.” *Ibid.* This happens in the “system of needs” of civil society. Collins concludes: “According to Hegel, therefore, the good cannot become an accomplished reality without a social dynamic that organizes the particulars of life into a system in which different sets of particulars become mutually supportive.” *Ibid.*, pp. 34–35.

62 *PR* §158.

of the development of the family. This development has three phases: marriage, family property and capital, the education of children, and the dissolution of the family.⁶³ Marriage contains the natural "moment" of physical desire and human reproduction, but it is made an *ethical* institution by the translation of a natural impulse into a *spiritual* (*geistig*) union.⁶⁴ Thus: "The ethical aspect of marriage consists in the parties' consciousness of this unity as their substantive aim, and so in their love, trust, and common sharing of their entire existence as individuals."⁶⁵ The ceremony gives marriage an ethical existence.⁶⁶ Men and women have different roles; man's consciousness is characterized by "conceptual thought" and "the volition of the objective final end," while woman's consciousness is more emotional and centered on the family.⁶⁷ For Hegel, the essence of marriage is monogamy because it is entered into by two personalities who mutually surrender themselves to the other.⁶⁸ The family, just as the "abstract will," has to actualize itself and, in order to do so, it must possess property. Hence the significance of the family capital.⁶⁹ Specifically: "This capital is common property so that, while no member of the family has property of his own, each has his right in the common stock."⁷⁰ The unity of marriage is implicit; it is "only a unity of inwardness or disposition." But outwardly this unity is split into two partners, a man and a woman. Marriage attains an explicit, perfect, unity in a third party (the child) who arises out of the union of the other two and "the parents love the children as their love, as the embodiment of their own substance."⁷¹ When the children become adults, the family dissolves. As adults, the children are now legal persons in civil society and found families of their own.⁷² Occasionally, the parents divorce.⁷³ The family

63 PR §160.

64 PR §161.

65 PR §163.

66 PR §164.

67 PR §166.

68 PR §167.

69 PR §169.

70 PR §171.

71 PR §173.

72 PR §177.

73 PR §176.

“disintegrates ... into a plurality of families” or expands to such a degree that it is not a family any longer but becomes a “people” or “nation.”⁷⁴ Thus is effected the transition to civil society, which is “the stage of difference” and the sphere of “particularity.”⁷⁵

Civil society (*bürgerliche Gesellschaft*) is the economic sphere, where each person pursues his own interests and goals. The “concrete person” is, therefore, “one principle of civil society.” But, in pursuing his aims, each person enters into relationships with other persons: “... the particular person is essentially so related to other particular persons that each establishes himself and finds satisfaction by means of the others.” Simultaneously, through interpersonal relationships a formal “universality” is attained. Personal satisfaction is *mediated* by this “universality,” which is “the second principle” of civil society.⁷⁶ While individuals act selfishly in the economic sphere, they form “a system of complete interdependence,” wherein the livelihood and rights of each is interconnected to the livelihood and rights of the others. Says Hegel: “This system may be *prima facie* regarded as the external state, the state based on need, the state as the Understanding envisages.”⁷⁷ The “Understanding” („*Verstand*“) is the analytical thinking which breaks reality down into isolated elements, while failing to bring these elements together in a harmonious manner. By contrast, “reason” („*Vernunft*“) is the synthesizing faculty which perceives the interconnections between different aspects of reality.⁷⁸ According to Hegel, all political theorists before him tended to confuse the state proper with civil society.⁷⁹ It is Hegel’s major contribution to political theory to have made this distinction. For Hegel, in civil society, wherein reigns particularity, the aforesaid system of interdependence appears as “the external state.” It is “external,” as the “Understanding” emphasizes distinction. The “Understanding”

74 PR §181 and §181A respectively.

75 PR §181.

76 PR §182.

77 PR §183.

78 G. W. F. Hegel, „Differenz des Fichteschen und Schellingschen Systems der Philosophie“, in G. W. F. Hegel, *Erste Druckschriften*, herausgegeben von G. Lasson (Leipzig: Felix Meiner Verlag, 1928), SS. 1–113.

79 PR note to §258.

is unable to discern the *necessary* relations between things. Rather, this system of interdependence is an “invisible hand,” as Adam Smith would say; interdependence happens behind the back of actors, so to speak. That said, it is worth noting that, in Hegel's view, it was the principle of “particularity” that distinguished modern from ancient times. Also, it was this principle of “particularity” as that of “subjective freedom” that Plato had tried to extirpate from his ideal city state, as portrayed in the *Republic*. For Hegel, therein lay the defect of Plato's political philosophy.⁸⁰ It should be remarked that Plato's political philosophy, according to Hegel, was not an unrealizable ideal. In the preface to the *Philosophy of Right* he says that “even Plato's *Republic*, which passes proverbially as an empty ideal, is in essence nothing but an interpretation of the nature of Greek ethical life.”⁸¹ In civil society “... the Idea is present only as a relative totality”⁸² Civil society is a unity of externally related atoms. It contains three “moments”: (a) the system of needs, (b) the administration of justice, and (c) the police and the corporation.⁸³

By “system of needs” Hegel means economic relations. Unlike animals, humans multiply their needs as well as the means of satisfying them and divide a concrete need into different parts.⁸⁴ As needs and the ways of satisfying them multiply and become more sophisticated, they gradually become “abstract.”⁸⁵ By the same token, interpersonal relations become abstract.⁸⁶ Needs are satisfied through material things. To acquire them, one has to work. It is through work that “the raw material directly supplied by nature” is adapted to human ends.⁸⁷ In modern times there is a “division of labour,” so that the job of each person becomes highly specialized, less complex but more skilled. Simultaneously, individuals come to depend on

80 PR note to §185.

81 Hegel, *Grundlinien der Philosophie des Rechts*, S. 14; cited from Hegel, *Hegel's Philosophy of Right*, p. 10.

82 PR §184.

83 PR §188.

84 PR §190.

85 PR §191.

86 PR §192.

87 PR §196A.

one another. As there is no direct link between one's need and its satisfaction but someone's needs and their satisfaction are *mediated* by the needs of the others and their satisfaction, work is *social*. Moreover, a particular task becomes "more and more mechanical," until machines come to replace the worker(s).⁸⁸ The relations of production and exchange become "crystallized" into different social groups or "class-divisions."⁸⁹ Thus, there are three classes: (a) "the *substantial* or immediate [or agricultural] class," (b) "the reflecting or *formal* [or business] class," and (c) "the *universal* class [the class of civil servants]."⁹⁰ To a certain extent to which class one belongs is determined by natural ability, birth, "and other circumstances"; but, importantly, in modern times individuals have the opportunity to choose a profession and thereby their social position.⁹¹ Membership of a class is essential, for it is only as a member of a class that one obtains a social identity. Furthermore, as a member of a class, the individual is raised above his private interests (particularity) to a consideration of the interests of other members of the class (universality).⁹²

In civil society "the right of property" is "no longer merely implicit," as it was in the section on "Abstract Right." Rather, property is protected through the administration of justice.⁹³ This right has "objective actuality," as, first, it exists for consciousness, it is known, and, second, it is "known as universally valid."⁹⁴ In civil society "right" is no longer an "abstract right" but there is a positive legal system. Says Hegel: "The principle of rightness becomes the law (*Gesetz*) when, in its objective existence, it is posited (*gesetzt*), i.e. when thinking makes it determinate for consciousness and makes it known as what is right and valid; and in acquiring this determinate character, the right becomes positive law in general."⁹⁵ In the foregoing passage Hegel is playing with the etymology of the German word for "law"

88 PR §198.

89 PR §201.

90 PR §202.

91 PR §206.

92 PR §207.

93 PR §208.

94 PR §210.

95 PR §211.

(„*Gesetz*“): The *Gesetz* is posited, *gesetzt*: “In being posited in positive law, the right acquires determinate existence.”⁹⁶ Positive law is applicable both to the relations and transactions of civil society and to the family, though only when the latter begins to dissolve.⁹⁷ By being posited in positive law, right applies “to the single case.”⁹⁸ Crucially, at this stage “wrongdoing” affects the social whole and not merely an abstract free will, as at the stage of “Abstract Right.” Thus, “the action is seen as a danger to society and thereby the magnitude of the wrongdoing is increased.” On the other hand, the robustness of society and its institutions diminish the significance of the damage. As a result, the punishment is less severe.⁹⁹ In addition, punishment ceases to have the character of revenge and is now administered by the system of justice: “Objectively, this is the reconciliation of the law with itself; by the annulment of the crime, the law is restored and its authority is thereby actualized. Subjectively, it is the reconciliation of the criminal with himself, i.e. with the law known by him as his own and as valid for him and his protection; when this law is executed upon him, he himself finds in this process the satisfaction of justice and nothing save his own act.”¹⁰⁰

The “court of justice” applies the law to “a particular case.”¹⁰¹ The law, by definition universal, needs to be adapted to the circumstances of the case. For this reason, the nature of the case must first be determined and then the case be subsumed under the general law.¹⁰² Therefore, the administration of justice synthesizes the particular with the universal. For Hegel, it was important that proceedings be public and that there be a jury.¹⁰³ By synthesizing particularity with universality, the system of justice is an attempt to overcome the particularity and individualism of civil society. However, particularity is overcome and universality achieved at best only

96 *PR* §212.

97 *PR* §213; Hegel refers the reader to §159.

98 *PR* §214.

99 *PR* §218.

100 *PR* §220.

101 *PR* §219.

102 *PR* §225.

103 *PR* §§227–228.

in those cases which come to the court. The “actualization of this unity” is the task of the “Police” and the “Corporation.”¹⁰⁴

In the sphere of the market there are winners but there are also losers. Hegel was well aware of this fact. The “Police” or “public authority” intervenes in order to correct the deficiencies of the market. It controls trade and commerce,¹⁰⁵ provides a public education,¹⁰⁶ prevents individuals from leading licentious lives,¹⁰⁷ and caters for the poor, not only by providing them with the necessities of life but also by aiming to transform their moral disposition which may have caused their poverty in the first place.¹⁰⁸ So Hegel saw the significance and necessity of what we would call nowadays a welfare state. He recognized the structural nature of poverty and that it tended to lead to the emergence of a “rabble of paupers,” who lived on the margins of civil society and did not share in its benefits.¹⁰⁹ The extreme polarization of civil society cannot be solved internally; “This inner dialectic of civil society thus drives it ... to push beyond its own limits and seek markets”¹¹⁰ Colonization is a way to export surplus goods and population.¹¹¹ Briefly, the purpose of the “public authority” is to sustain

104 PR §229.

105 PR §236.

106 PR §239.

107 PR §240.

108 PR §241, pp. 148–149. In the note to §242 Hegel remarks that the public authority is responsible for such public utilities as street-lighting, as well as public almshouses and hospitals.

109 PR §244. According to the standard interpretation of these passages of the *Philosophy of Right*, Hegel does not solve the problem of poverty but only acknowledges it. I am inclined to this interpretation myself, but Anderson has argued that there is an implicit view in Hegel’s social philosophy on how to solve the problem of poverty. Specifically, Anderson has maintained that a solution to the problem of poverty would have to consider practices of consumption and that corporations can form more self-conscious, ethical and responsible consumers. J. Anderson, “Hegel’s Implicit View on How to Solve the Problem of Poverty: The Responsible Consumer and the Return of the Ethical to Civil Society,” in Williams (ed.), *Beyond Liberalism and Communitarianism*, pp. 185–205.

110 PR §246.

111 PR §§247–248.

the “universal” implicit in the “particularity” of civil society. This is also the task of the “Corporation.”¹¹²

It is in “the business class,” characterized by “the particular,” that the corporations have a role to fulfill. The “agricultural class has directly within itself the concrete universal in which it lives,” while “the class of civil servants” is characterized by universality.¹¹³ Noticeably, skilled workers belong to the business class as well. A corporation is, therefore, an association of producers and skilled workers who are involved in a specific branch of industry. The role of the corporation is to raise each individual from particularity (his specific interests) to universality (the interests of all members).¹¹⁴ Therefore, its role is educative. A corporation operates “under the surveillance of the public authority” and has four rights: (a) to provide for the interests of a given industrial sector, (b) to co-opt new members on the basis of their skills and moral disposition, as well as in accordance with the needs of the economy, (c) to offer protection to the members of the sector from the fluctuations of the economy, and (d) to provide training for others to join the sector.¹¹⁵ Crucially, it is as a member of a corporation that the individual acquires a social identity, a social status. In the corporation the individual “belongs to a whole which is itself an organ of the entire society.”¹¹⁶ Nevertheless, the purpose of the corporation is “restricted and finite,” while “the public authority” is merely “an external organization.” These find “their truth,” that is, are grounded, in the state. “Hence the sphere of civil society passes over into the state.”¹¹⁷ Crucially: “... the state as such is not so much the result as the beginning. It is within the state that the family is first developed into civil society, and it is the Idea of the state itself which disrupts itself into these two moments.”¹¹⁸

The state is the highest “moment” of “Ethical Life.” As Hegel puts it: “The state is the actuality of the ethical Idea.”¹¹⁹ The state is the

112 *PR* §249.

113 *PR* §250.

114 *PR* §251.

115 *PR* §252.

116 *PR* §253.

117 *PR* §256.

118 *PR* note to §256.

119 *PR* §257.

objectification of human reason and will in political institutions. It is within it that “freedom comes into its supreme right.”¹²⁰ What is important is that the state, as the embodiment of “reason” („*Vernunft*”) – in contradistinction to the “Understanding” („*Verstand*”), is a unity in difference. This is the fundamental Hegelian insight. The modern state incorporates the principles of particularity and subjectivity. In this way, it synthesizes what was best in antiquity (substantive unity) with what is best in modernity (the emergence of difference, particularity, and subjectivity).

My thesis is that Hegel does not prescribe what the state should be like, nor does he construct a political edifice on the basis of some assumptions. The *Philosophy of Right* is an attempt to philosophize without foundations and its structure attests to this. The state is presupposed by “Abstract Right” and “Morality,” in the sense that it is their ultimate, determining ground. The argument of the *Philosophy of Right* takes the form of a development, in which the true “is the process of its own becoming, the circle that presupposes its end as its goal, having its end also as its beginning.”¹²¹ Rather than designing a model state, Hegel articulates philosophically the nature of the modern state. This does not mean that Hegel defends the status quo, that is, the Prussian state. For one thing, the state he describes is not Prussia in particular but the modern European state. For another, Hegel renders explicit the rational principles immanent in the historical state. States are not rational simply because they exist. Existence and actuality are not the same. Nor are reality and actuality, for that matter. This should be borne in mind when one reads the celebrated phrase of the preface of the *Philosophy of Right* “*What is rational is actual and what is actual is rational.*”¹²² What is rational is the *essence* of things, not their phenomenal appearance. The essence of things corresponds to their actuality.

The “Idea of the state” has three “moments” or aspects: (a) the constitution or constitutional law, (b) international law, and (c) world history.¹²³ It is important to note, as Pelczynski has emphasized, that Hegel distinguishes

120 PR §258. Cf. “The state is the actuality of concrete freedom.” PR §260.

121 PhG, S. 14; cited from PhS, p. 10.

122 Hegel, *Grundlinien der Philosophie des Rechts*, S. 14; cited from Hegel, *Hegel's Philosophy of Right*, p. 10.

123 PR §259.

between the narrow “strictly political state and its constitution”¹²⁴ and the wider sense of the state as an ethical community, of which the family, civil society, and the “political state” are “moments.”¹²⁵

The constitution is rational, in so far as each of its parts is interrelated to the others into a concrete whole; it displays a unity in difference or differentiated unity.¹²⁶ So theories of a separation of powers *misunderstand* the nature of the constitution, since they assume that each power – the legislative, executive, and judiciary – is independent of the others and acts as a check to them.¹²⁷ Internally the state has three “moments”: (a) the legislature, which determines and establishes the universal, (b) the executive, which subsumes the particular under the universal, and (c) the crown, “the power of subjectivity.”¹²⁸

Respecting the latter, it “contains in itself the three moments of the whole,” to wit, (a) “the *universality* of the constitution and the laws,” (b) counsel, which refers “the *particular* to the universal,” and (c) “the moment of ultimate decision, as the *self-determination* to which everything else reverts and from which everything else derives the beginning of its actuality.”¹²⁹ The significance of the crown lies in its symbolism, for it symbolizes the “substantial unity”¹³⁰ of the state in an individual will.¹³¹ The monarch is hereditary.¹³² Importantly, the monarchy is constitutional, not arbitrary.

The task of the executive is to subsume the particular under the universal. The “executive power . . . also includes the powers of the judiciary and the police.”¹³³ The executive consists of the civil servants and higher advisory

¹²⁴ PR §267.

¹²⁵ Z. A. Pelczynski, “Introduction: The Significance of Hegel's Separation of the State and Civil Society,” in Pelczynski (ed.), *The State and Civil Society*, p. 11.

¹²⁶ PR §272.

¹²⁷ PR note to §272.

¹²⁸ PR §273.

¹²⁹ PR §275.

¹³⁰ “The fundamental characteristic of the state as a political entity is the substantial unity, i.e. ideality, of its moments.” PR §276.

¹³¹ PR §279.

¹³² PR §280.

¹³³ PR §287.

officials. Higher ministers come into direct contact with the monarch.¹³⁴ The organization of the officials is as follows: First, the officials lower down the hierarchy, such as corporation officers, are popularly elected; second, there are administrative officials in different departments; third, departments are supervised by a supreme official.¹³⁵ Civil servants are appointed on the basis of merit;¹³⁶ they are nominated by the monarch¹³⁷ and the tenure of an individual's position is conditional on the fulfillment of the duties the position involves.¹³⁸ Hegel recognized that there was a tendency among civil servants to develop a distinctive culture and to regard themselves as a caste within the state;¹³⁹ however, this was checked by the sovereign from above and the corporations from below.¹⁴⁰ Civil servants and the members of the executive form "the greater part of the middle class."¹⁴¹

The legislature firstly formulates or amends the laws as and when appropriate and, secondly, concerns itself with home affairs.¹⁴² With reference to "private individuals," its tasks are: first, to formulate laws providing for private rights, the rights of communities, corporations, and organizations; second, to exact services from them by means of taxation.¹⁴³ The monarch, the executive, and the Estates sit in it.¹⁴⁴ By "Estates" is meant the political representation of the classes of civil society. The "Estates" are "a mediating organ" and stand between the government and "the nation broken up into particulars (people and associations)"; in giving political representation to the classes, "they prevent individuals from having the appearance of a mass or an aggregate and so from acquiring an unorganized opinion and from crystallizing into a powerful *bloc* in opposition to the organized state."¹⁴⁵

¹³⁴ *PR* §289.

¹³⁵ *PR* §290.

¹³⁶ *PR* §291.

¹³⁷ *PR* §292.

¹³⁸ *PR* §294.

¹³⁹ *PR* §295.

¹⁴⁰ *PR* §297.

¹⁴¹ *Ibid.*

¹⁴² *PR* §298.

¹⁴³ *PR* §299.

¹⁴⁴ *PR* §300.

¹⁴⁵ *PR* §302.

The landed gentry *mediates* between the crown and civil society, for, like the monarchy, they too are hereditary, while their interests do not affect the rest of civil society.¹⁴⁶ The business class elects its own deputies to the legislature.¹⁴⁷ Accordingly, there are two houses in the assembly of the “Estates” – an upper house, wherein sits the agricultural class, and a lower house, wherein sits the business class.¹⁴⁸

Let us now turn to look at the state in the international arena. One has to be careful when reading this section, because Hegel does *not* prescribe a foreign policy. Like a human individual, the state can attain its identity only through relation to another: “Individuality is awareness of one’s existence as a unit in sharp distinction from others. It manifests itself here in the state as a relation to other states, each of which is autonomous *vis-à-vis* the others. This autonomy embodies mind’s actual awareness of itself as a unit and hence it is the most fundamental freedom which a people possesses as well as its highest dignity.”¹⁴⁹ In the international arena the interests of different states clash. War ensues. In time of war the citizens become aware of the contingency of their position; they realize that their “rights and interests” are “a passing phase” and that they owe their very existence to the state.¹⁵⁰ Thus, they are prepared to defend the state at the risk of their lives. Although the duty to defend the state is “a universal duty,” that is, a duty of “all its members,” Hegel also distinguishes “a class” of soldiers characterized by “courage.”¹⁵¹ One has to bear in mind what international relations were like in the nineteenth and the early twentieth centuries (until the World War I) when reading this section. Nation-states pursued aggressive foreign policies. At first, one has a sense that Hegel refers to a defensive war when discussing war (see, e.g., “But if the state as such, if its autonomy, is in jeopardy, all its citizens are in duty bound to answer the summons to its defence.”)¹⁵² Yet, at one point Hegel seems to

146 PR §§305–307.

147 PR §§308–311.

148 PR §312.

149 PR §322.

150 PR §324.

151 PR §325.

152 PR §326.

be referring to an aggressive war when he says “The state’s tendency to look abroad lies in the fact that it is an individual subject.”¹⁵³ At any rate, Hegel did not think that the modern state could, or would, supersede this stage in a league of nations, for example. States cannot become interdependent in the same way as individuals. In order to satisfy their needs, individuals enter into economic relationships within the sphere of civil society; by contrast, “autonomous states are principally wholes whose needs are met within their own borders.”¹⁵⁴ As self-sufficient unities, states do not develop ties of interdependence. But they do seek recognition¹⁵⁵ and for this reason they occasionally engage in war. Hegel did not think that there could be “perpetual peace.”¹⁵⁶ Rather, states are “in a state of nature in relation to each other.”¹⁵⁷ International law takes the form of “an ought-to-be”¹⁵⁸ “and what really happens is that international relations in accordance with treaty alternate with the severance of these relations.”¹⁵⁹

Finally, the state has an historical dimension. World history is not a series of accidental events; rather, it has a rational purpose, inasmuch as it is made by rational human beings. Human reason is instantiated in historical developments: “... world history is the necessary development, out of the concept of mind’s freedom alone, of the moments of reason and so of the self-consciousness and freedom of mind. This development is the interpretation and actualization of the universal mind.”¹⁶⁰ T. M. Knox translates the word „*Geist*” as “mind” throughout his translation of the *Philosophy of Right*. I tend to prefer the word “spirit.”¹⁶¹ This is because

153 PR §329.

154 PR §332.

155 PR §331.

156 The expression “perpetual peace” is Kant’s. See I. Kant, “Perpetual Peace: A Philosophical Sketch,” in I. Kant and H. S. Reiss (eds), *Political Writings*, 2nd edn (Cambridge, New York, Melbourne, Delhi and Singapore: Cambridge University Press, 1991), pp. 93–130.

157 PR §333.

158 PR §330A and §333.

159 PR §333.

160 PR §342.

161 A. V. Miller translates the word „*Geist*” as “spirit” in his translation of the *Phenomenology of Spirit*, referred to in this chapter.

“mind” refers to something mental, whereas *Geist* has objective existence. Each historical stage is a “necessary moment” in the development of the world spirit¹⁶² – spirit in the foregoing concrete sense. To begin with, in the Oriental world human civilization was centered around the freedom of one individual, the despot, who ruled arbitrarily.¹⁶³ The next significant stage in the development of human civilization was the Greek world; this was a civilization based on the freedom of the few, the citizens.¹⁶⁴ Human civilization developed in Rome, where interpersonal relationships were formal and legal categories abstract and fixed.¹⁶⁵ At the time Hegel was writing human civilization had developed in the modern Germanic state, where freedom was enjoyed by all.¹⁶⁶ Although Hegel refers to the modern state as “Germanic,” what he really means is northern European.

6 Conclusion

The purpose of this chapter has not been to offer an exhaustive exegesis of Hegel's *Philosophy of Right*. Rather, it has been to explicate its structure and the form of Hegel's argument. The *Philosophy of Right* develops the “Idea” out of the “concept”; that is to say, it follows the *immanent development* of the subject-matter. Its subject-matter is the “Idea of right,” viz. “the concept of right” along with its “actualization.”¹⁶⁷ The “concept of right” is the “free will”¹⁶⁸ and the argument of the *Philosophy of Right* is so structured that the state proves to be the creation of the individual will. The three parts of the *Philosophy of Right* – that is, “Abstract Right,” “Morality,” and “Ethical Life” – are “moments” or aspects of the whole,

¹⁶² *PR* §345.

¹⁶³ *PR* §355.

¹⁶⁴ *PR* §356.

¹⁶⁵ *PR* §357.

¹⁶⁶ *PR* §§358–360.

¹⁶⁷ *PR* §1.

¹⁶⁸ *PR* §4.

and the argument takes the form of a development, whose purpose is to show that each stage arises out of the contradictions or inadequacies of the previous one. Thus, “Ethical Life” – and the highest stage within it, the state – is not posited in *a priori* manner. Rather, it develops out of the contradictions and inadequacies of successively “Abstract Right” and “Morality.” As the reader will have noticed, the *Philosophy of Right* is structured in triads. Moreover, as Inwood remarks, these triads are generally meant “to exemplify one or more logical patterns” – that is, concept-reality-idea, universal-particular-individual, in itself-for itself-in and for itself. However, “the structure of the work as a whole does not correspond systematically to that of the Logic.”¹⁶⁹ I have argued that Hegel does not construct a blueprint for a state. Rather, he offers a philosophical articulation of the nature of the modern European state.

169 M. Inwood, *A Hegel Dictionary* (Cambridge, Massachusetts: Blackwell, 1992, 1995 reprint), p. 223.

3 Forms of Freedom

Hegel on Civil and Political Liberty

Without such a representative body, liberty is no longer conceivable.¹

The contribution places Hegel's political philosophy, chiefly presented in *Elements of the Philosophy of Right* from 1820 (Hegel, *Werke*, 7:11–512; Hegel, *Elements*, 1–380) but already adumbrated in *The German Constitution* from 1799 to 1802 (Hegel, *Werke*, 1: 449–610; Hegel, *Political Writings*, 6–101), in the context of the debate between the ancients and the moderns about the relation between the citizen and the state. In particular, the contribution attributes to Hegel a third, conciliatory position beyond the fixed opposition between the ancient republican ideal of civic commitment and service and the modern liberal emphasis on individual liberty and personal self-fulfillment. Particular attention is paid to the early Hegel's analysis of personal liberty and political liberty in Germany's past and present and to the later Hegel's distinction between civil society and the political state in the modern world. A special focus is on the historical and systematic linkage between political liberty and political representation and on the status and function of the "estates" (*Stände*) in Hegel.

1 G. W. F. Hegel, *Werke in zwanzig Bänden*, ed. E. Moldenhauer and K. M. Michel (Frankfurt/M.: Suhrkamp, 1970), 1: 572; G. W. F. Hegel, *Political Writings*, ed. L. Dickey and H. B. Nisbet, trans. by H. B. Nisbet (Cambridge: Cambridge University Press, 1999), 94 (translation modified). Subsequent references to Hegel, *Werke* and Hegel, *Political Writings* will be provided parenthetically in the main text. The same holds for references to G. W. F. Hegel, *Elements of the Philosophy of Right*, ed. A. W. Wood and trans. by H. R. Nisbet (Cambridge: Cambridge University Press, 1991).

At the methodological level, the contribution argues for the need to systematically supplement Hegel's main published text in political philosophy, *Elements of the Philosophy of Right*, which provides but a condensed handbook version ("outline") of his mature views, with the narrower context of his earlier published and unpublished work in political philosophy and the wider context of modern political theory and practice in general and Germany's earlier and more recent political history in particular. Section 1 relates Hegel's politico-philosophical thought to the contemporary debate about the liberty of the ancients and the liberty of the moderns, as famously articulated by Benjamin Constant. Section 2 addresses the early Hegel's polemical portrayal of Germany's failing constitution under the Old Empire focusing on his distinction between the twofold liberty to be found in Germany's peculiar political landscape past and present ("German freedom"). Section 3 draws on the two distinctions between ancient and modern liberty and between the two kinds of "German freedom" to elucidate the mature Hegel's innovative distinction between civil society and the political state.

1 Freedom Ancient and Modern

In 1819, the year of Hegel's first Berlin lectures on the philosophy of right (winter semester 1818/1819), to be followed by their publication the following year (with the date of publication given as 1821), the Swiss-French politician and political theorist Benjamin Constant (1767–1830) gave a lecture at a Paris academic institution which he entitled "The Liberty of the Ancients Compared With That of the Moderns."² While chiefly

2 B. Constant, *Political Writings*, ed. B. Fontana (Cambridge: Cambridge University Press, 1988), pp. 308–328. In what follows, Constant's lecture is cited and quoted parenthetically in the main text according to the published English translation in Constant, *Political Writings*. For a French edition of the lecture, together with the other political works by Constant mentioned below, see B. Constant, *Œuvres*, ed. A. Roulin (Paris: Gallimard, 1957).

remembered for his pathbreaking, secretly autobiographical novel *Adolphe* (1816) and other outright autobiographical works, Constant was in his time a renowned political figure and a widely influential political publicist, who held high political offices in post-revolutionary France (under the Directorate and during the Reign of 100 Days) and served for a term in the lower chamber of France's restored and constitutionally reformed Bourbon monarchy. In addition, Constant wrote several works that belong to the extended canon of modern political philosophy, chiefly among them *Principles of Politics Applicable to All Government* (1806) and *On the Spirit of Conquest and Usurpation* (1814),³ both of which informed his lecture from 1819 on the two historically differentiated kinds of liberty.

While Hegel and Constant pursued entirely different career paths in vastly different sociopolitical cultures – the former that of a German academic philosopher, the latter that of a French public intellectual – the two share more than belonging to the same generation that lived through the French Revolution, the Empire of Napoleon, the Restoration of the Ancient Regime, and the Paris July Revolution of 1830. Constant grew up in Lausanne, the very region of Francophone Switzerland – the Pays de Vaud (*Waadtland*) – then under foreign rule by the German Swiss city state of Berne and its oligarchic government, which Hegel experienced first-hand as a private tutor in the household of one of Berne's patrician families (1793–1796) and which formed the object of Hegel's first, anonymous publication, a commented German translation of *Confidential Letters About the Former Relationship in Terms of Public Law of the Pays de Vaud to the City of Berne. A Complete Revelation of the Former Oligarchy of the Berne Estate* (1798). In addition, Hegel and Constant share an early and lasting formation through Montesquieu's monumental comparative study of ancient and modern political cultures, *On the Spirit of the Laws* (1748),⁴

3 Constant, *Political Writings*, pp. 170–305 and Constant, *Political Writings*, pp. 42–167.

4 C. L. Montesquieu, *The Spirit of the Laws*, ed. A. M. Coulter and B. C. Miller, trans. by H. S. Stone (Cambridge: Cambridge University Press, 1989).

which deeply shaped both Hegel's and Constant's politico-philosophical outlook on the forms and norms of law and politics.⁵

In addition, Hegel and Constant have in common a distinct preference for modern, constitutionally limited monarchy over republican or democratic regimes, while insisting on the individual liberty of the citizen in the modern commercially oriented polity. To be sure, Hegel's substantial commitment to liberal political principles has been under dispute since the publication of *Elements of the Philosophy of Right* in the midst of the anti-liberal Carlsbad Decrees issued by the German Federation in 1819. By contrast, aside from his brief entanglement in Napoleon's return to power between the escape from Elba and the defeat at Waterloo, Constant appears a pioneer of modern (political) liberalism whose lecture on the two kinds of liberty was to inspire Isaiah Berlin's twentieth-century retake on the distinction under the guise of "two concepts of liberty."⁶ Still undertaking the analysis and assessment of Hegel's juridico-political philosophy, centered as the latter seems to be around the German political realities at the beginning of the nineteenth century, against the backdrop of Constant's political thought, informed as it is by the French political situation between the revolutions of 1789 and 1830, can help counterbalance the customary focus, not to say fixation, on Hegel's relation to the contemporary Prussian state. The horizon opened up by Constant's comparative contrast of ancient and modern liberty is matched by Hegel's own wider perspective on the past, present, and future of European statehood in general and the German imperial federative polity, the "Holy Roman Empire [of the German Nation]" (*Sacrum Imperium Romanum [Nationis Germanicae]*),⁷ in particular.

Although only about twenty pages in length, Constant's lecture from 1817 reflects its author's considerable knowledge of previous and recent political history, his extensive first-hand political experience, and his thorough

5 On Constant's actual influence on Hegel, see L. Siep, *Praktische Philosophie im Deutschen Idealismus* (Frankfurt/M.: Suhrkamp, 1992), pp. 240f.

6 I. Berlin, *Liberty*, ed. H. Hardy (Oxford: Oxford University Press, 2002).

7 The identifier "German nation," designed to nominally differentiate the Empire from its Roman precursor, was added only in the late fifteenth century, some four hundred years into the Empire's official history.

familiarity with past and present political thought. The lecture, which lacks the scholarly trappings of citations, quotations, and other such references, combines the contrastive comparison of “liberty” (*liberté*) in the ancient and the modern world with a critical analysis of the forms and norms of society and politics in contemporary, post-Revolutionary, and post-Napoleonic France. Constant’s interest in the topic is neither academic nor antiquarian, but eminently political and entirely contemporary. By conceptually distinguishing the “kinds” or “sorts” (Constant, *Political Writings*, 309, 327) of liberty characteristic of classical antiquity and recent modernity, Constant aims at ascertaining what social and political life in contemporary France – and beyond that in Western Europe and North America – can and should be like.

Drawing on the earlier French debate in literature and in the arts about the respective achievements and advantages of ancient and modern culture and civilization (“quarrel between the ancients and the moderns”) and informed by earlier comparisons between ancient and modern society and politics, Constant distinguishes ancient and modern liberty by contrasting two radically opposed meanings of “liberty.” On the one side, there is the specifically *political* form of liberty, geared at the citizens’ active and direct participation in politics, as sought and cherished by the ancients, termed “political liberty” (*liberté politique*) (Constant, *Political Writings*, 324). On the other side, there is the specifically *civil* form of liberty, aimed at the citizens’ unfettered personal and social life, suitable to the moderns and termed “civil liberty” (*liberté civile*) (Constant, *Political Writings*, 324). The distinction between political and civil liberty goes back to Montesquieu.⁸ The allocation of the contrast to the distinction between the ancients and moderns, while prepared and adumbrated in Montesquieu, is Constant’s contribution.

To be sure, both forms of liberty – “civil” and “political” liberty – have to be considered political in the general sense of pertaining to life in the polity, regardless whether the latter is of the ancient or the modern variety. But while life under specifically political liberty, to be found among the ancients, involves each full citizen in the governance of the (Greek) *polis* or the

8 Montesquieu, *The Spirit of the Laws*, p. 157 and p. 167.

(Roman) *res publica*, specifically civil liberty, to be found among the moderns, concerns the politically protected liberty *qua* “security” (Constant, *Political Writings*, 317) of the citizens, in their essentially private lives, from the intrusive influence of both politics (government) and fellow citizens (society). Moreover, political liberty and civil liberty in Constant are not only distinguished but also opposed. The essentially political, participatory liberty of the ancients includes the sustained subordination of the individual under the demands of the political whole of which each individual forms but a dependent part. By contrast, the essentially civil liberty of the moderns is centered around the unfettered development of each individual in the context of contemporary culture and society.

While the juxtaposition of ancient and modern liberty operates, epistemologically speaking, with the artificial device of ideal types, Constant is keenly aware of the concrete, socio-economic conditions under which each item of the typology comes about and persists. In particular, Constant cites the following features that enable and determine ancient, participatory, or political liberty: the small size of the territory of ancient polities that assures a communal identity among the citizens; the proneness of the ancient polities to frequent warfare with neighbors and rivals that militarizes the citizenry into citizen-soldiers; and the social institution of slavery that effectively frees the full (male) citizens from manual labor and even from the exercise of arts and crafts and affords them the leisure for political pursuits (Constant, *Political Writings*, 312–315). The general trait that pervades existence under conditions of ancient liberty is the pervasive social control of individuals’ lives exercised by the political community undertaken in the interest of the well-being of the *polis* or the *res publica*. In sum, ancient liberty *qua* political liberty is the liberty of the polity as a whole and only indirectly that of its members, who thus enjoy “collective liberty” (Constant, *Political Writings*, 311).

By contrast, according to Constant, the characteristic sociopolitical circumstances under which modern, personal, and civil liberty arises and flourishes are large, monarchically ruled countries (“nations”) that engage in the monetarily mediated exchange of natural and artisanal products both within a given country and between countries (“commerce”; Constant, *Political Writings*, 313). For Constant, such modern nations have replaced,

to a considerable extent, militarily manifest warfare with economic competition. Accordingly, the hallmark of life under modern liberty is the “peaceful enjoyment” of the goods and services modern life affords and the “private independence” (Constant, *Political Writings*, 316) in leading such a life on the part of those who can afford it. Unlike in the case of ancient liberty, with its exclusive tie of liberty to the collective citizenry (“collective liberty”), modern liberty, for Constant, is essentially “individual liberty” (Constant, *Political Writings*, 315 *passim*).

Constant concedes the schematic character of his binary division of antiquity and modernity. In particular, he acknowledges that the collectivist conception of ancient political liberty fits more the conservative constitution of Sparta than that of commercially, intellectually, and artistically progressive Athens. While acknowledging the incipient features of individual liberty in increasingly democratic fifth-century B.C. Athens, Constant also points to the infringement upon the individual citizen by direct democratic decisions and directives even in Athens, most prominently among them the extended exile of outstanding individuals perceived to threaten the democratic constitution (“ostracism”) (Constant, *Political Writings*, 321). The same holds for the public regulation of private life through extensive censorial measures in republican Rome (“Roman censorship”) (Constant, *Political Writings*, 322).

In the terms of political thinking, the turn from the eminently political, participatory liberty of the ancients to the decidedly civil, personal liberty of the moderns, as differentially diagnosed by Constant, follows the shift from civic communitarianism to private liberalism, as analyzed and advocated by English and Scottish Enlightenment thinkers, from Locke through A. Ferguson to A. Smith. But Constant’s conception of liberal modernity is equally informed by the French Enlightenment’s cultural and political progressivism, as epitomized by Condorcet⁹ and prepared by Rousseau’s description as well as prescription of human self-perfection (“perfectibility”).¹⁰ In particular, rather than orienting the liberated modern individual toward

9 M. J. A. N. C. Marquis de Condorcet, *Outline of an Historical View of the Progress of the Human Mind* (London: J. Johnson, 1795).

10 J.-J. Rousseau, *The Discourses and Other Early Political Writings*, ed. V. Gourevitch, 2nd edn (Cambridge: Cambridge University Press, 2018), pp. 113–222.

simple, self-content enjoyment (“happiness”), Constant stresses the possibility and desirability of sustained self-improvement (“self-development”) on the part of each individual (Constant, *Political Writings*, 327). In this regard, Constant anticipates the liberal perfectionism (or perfectionist liberalism) of J. S. Mill.¹¹ But Constant’s almost ethical emphasis on the self-cultivation of the modern individual also resonates with the somewhat earlier and roughly contemporaneous educative visions of a worthy human existence under the guiding concepts of “development” (*Entwicklung*) and “formation” (*Bildung*) to be found in W. v. Humboldt¹² as well as Hegel.¹³

To be sure, Constant’s endorsement of the comprehensive cultural shift from collective liberty to individual liberty is not intended to privatize modern individuals entirely and to remove them from the exercise of political power altogether. On the contrary, Constant stresses the need that modern individuals have to systematically safeguard their personal liberty by checking and controlling the public exercise of political power (Constant, *Political Writings*, 323). While the required political involvement of modern individuals does not take the ancient but antiquated form of direct and complete political participation in government on the part of the citizens, Constant identifies a modern substitute institution for the former participatory political practice – a substitute deemed not only more suitable than its ancient predecessor, viz., direct democracy, but even superior to the latter when it comes to protecting individuals’ liberty against popular, (pseudo-)democratic infringements. This exclusively modern political institution is the “representative system” (Constant, *Political Writings*, 325), by which Constant understands the formal introduction of a deliberative

11 J. St Mill, *On Liberty*, ed. D. Bromwich and G. Kateb (New Haven and London: Yale University Press, 2003), pp. 67–175. On the elitist aspect of J. S. Mill’s liberalism and its nineteenth-century intellectual context, see A. S. Kahan, *Aristocratic Liberalism. The Social and Political Thought of Jacob Burkhardt, John Stuart Mill, and Alexis de Tocqueville* (New York and Oxford: Oxford University Press, 1992).

12 W. v. Humboldt, *Werke*, ed. A. Leitzmann, vol. 1. (Berlin: Behr, 1903. Reprint Berlin: Walter de Gruyter, 1968), pp. 97–254; W. v. Humboldt, *The Limits of State Action*, ed. J. W. Burrow (Cambridge: Cambridge University Press, 1969).

13 Hegel *Werke*, 3: 5–591; G. W. F. Hegel, *The Phenomenology of Spirit*, ed. and trans. by T. Pinkard (Cambridge: Cambridge University Press, 2018).

and decisive body into government that is composed of individuals chosen (in various ways) to exercise political power on behalf and in the interest of recognized parts of the wider population ("proxy"; Constant, *Political Writings*, 326), such as adult males operating a business, holding property or exercising a skilled profession.

The frame of reference for Constant's "representative system" is the parliamentary institutions that define modern constitutional monarchies and modern republics alike. The foremost examples cited are England (together with Scotland), revolutionary and post-revolutionary France, and the United States of America (Constant, *Political Writings*, 310). But Constant abstains from differential descriptions and comparative judgments regarding the specific forms of political representation in the interest of a generic functional account of the "representative system" in the modern polity. Most importantly, Constant treats the institution of political representation as a feature that exceeds, even eludes, the ancient classification of constitutions into monarchical, aristocratic, and democratic forms of government. The modern political device of representation may be applied to all of them, and its addition to each of them modifies the ancient constitutional kinds into forms of government with a built-in concern for and a structural consideration of the interests, however diverse and manifold, of the aggregate, politically represented individuals.

For Constant, the defining difference between ancient and modern political systems is not the constitutional difference between ancient republics and modern monarchies *per se* but the absence, even ignorance, of institutionalized political representation in antiquity, on the one hand, and its presence, even preference, in modernity, on the other hand. Moreover, for Constant individual liberty and political representation go together since the liberated individuals both enable and require political representation, rather than direct participation, in order to assure their personal liberty. On Constant's view, political representation in the interest of personal liberty is best served and safest preserved in specifically modern, constitutionally limited monarchies. By contrast, according to Constant, republics ancient and modern tend to dwarf the liberal individual and individual liberty in general by what, with regard to the burgeoning democratic republic of the United States of America, Tocqueville would term the "tyranny of the

majority.”¹⁴ Constant himself though has more in mind the French republican revolutionaries who, under the influence of Rousseau’s nostalgic advocacy of ancient republics,¹⁵ forewent modern liberty in favor of an illusory emulation of ancient liberty – a collective mindset that Constant’s psychological perspicacity diagnoses as “regret” (Constant, *Political Writings*, 317).

Its extreme brevity and occasional nature notwithstanding, Constant’s lecture on ancient and modern forms of liberty makes a major contribution to modern political philosophy. It reorients the modern political discourse away from distinguishing and assessing polities by means of the ancient constitutional typology of monarchical, aristocratic, and democratic (as well as mixed) kinds of government, instead focusing on the form and function of representation in the body politic. To be sure, this seismic shift is prepared by earlier political thinkers, above all Montesquieu. It also has a curiously different counterpart in political theory and practice outside of pre- and post-revolutionary France, not the least in Germany and especially in Germany’s most advanced political thinker between Kant and Marx – Hegel, whose juridico-political philosophy of the modern polity and its citizenry is outright centered around the requirement of representation.

2 Freedom Anarchical and Representative

Before Hegel became, or rather came to be seen as, the philosopher of the system, founded in *The Phenomenology of Spirit* (1807) and erected in the *Encyclopedia of the Philosophical Sciences* (1817, 1827, 1830), he was a philologically trained, philosophically schooled, historically versed, and politically interested young intellectual trying to make a living from private tutoring and published writing, rather than from a pastor’s post, for which his education at the Tübingen Theological Institute (*Stift*) had

14 A. de Tocqueville, *Democracy in America*, ed. and trans. by H. C. Mansfield and D. Winthrop (Chicago: University of Chicago Press, 2002), p. 183 and pp. 239–264.

15 J.-J. Rousseau, *Discourse on Political Economy and the Social Contract*, trans. by C. Betts (Oxford: Oxford University Press, 1999), pp. 43–168.

prepared him but he felt no inclination. Had it not been for the small but significant inheritance he received upon his father's death in 1799, Hegel might have become one of the many public intellectuals regularly writing on politics, literature, and the arts for the numerous periodicals and year-books of the German late Enlightenment. Instead, Hegel suddenly could afford to take up an unsalaried teaching position at the University of Jena that gave him an entry into the hyperactive post-Kantian philosophical scene dominated at the time by his fellow student from Tübingen times, F. W. J. Schelling.

Hegel's pre-Jena works, most of them unpublished and often preserved or even executed only in fragmentary form, mainly bear on matters of law and politics. Even where they address manifestly theological questions, they often do so in a decidedly political perspective, as when Hegel discusses Hebrew and Christian religion in terms of the popular beliefs and practices they involve ("popular religion," *Volksreligion*).¹⁶ To be sure, Hegel's early politico-philosophical works, while informed by previous and recent thought, including Kant's revolutionary work in reason-based ethics and morality-based religion, still lack the sustained systematic perspective in which Hegel places his philosophical thinking about law and politics from his Jena years onward. Examples of the gradual integration of the politically astute Hegel and the philosophically systematic Hegel are the early essay on *Natural Law* from 1802/1803 (*On the Scientific Ways of Treating Natural Law*; Hegel, *Werke*, 2: 434–530; Hegel, *Political Writings*, 102–180) and the extensive, though fragmentary engagement with Fichte's legal and political philosophy from the same time period, eventually published under the misleading title *System of Ethical Life*.¹⁷

16 For a reappraisal of Hegel's early works, previously perceived as "theological writings," in the proper perspective of Hegel's evolving politico-philosophical thinking, see the editor's introduction in G. W. F. Hegel, *Frühe Schriften. Frankfurter Manuskripte und Druckschriften*, ed. W. Jaeschke (Hamburg: Meiner, 2020), pp. vii–xviii.

17 G. W. F. Hegel, *System der Sittlichkeit. Kritik des Fichteschen Naturrechts*, ed. H. D. Brandt, intro. K. R. Meist (Hamburg: Meiner, 2001); G. W. F. Hegel, *System of Ethical Life (1802/3) and First Philosophy of Spirit (Part III of the System of Speculative Philosophy 1803/4)*, ed. and trans. by H. S. Harris and T. M. Knox (Albany: State University of New York Press, 1979), pp. 97–186. On the proper

The extra-systematic status of the pre-Jena works also pertains to an extensive manuscript on which Hegel worked for a number of years (probably 1799–1802) without bringing the text to completion, much less publication. Since its first publication in 1893, the work, which is more a collection of topically related texts at various stages of composition and completion, bears the inauthentic title “The German Constitution” (*Die Verfassung Deutschlands*).¹⁸ Hegel’s Germany-specific work-in-progress from the turn of the century is both a timely and an untimely piece. It is timely in considering the shifting political landscape of Germany in the wake of the French Revolution and of France’s revolutionary wars against its Eastern neighbor. But it is also untimely, since Germany’s Imperial constitution as a loose federation of increasingly sovereign states was about to vanish, along with the Empire it was supposed to constitute, under the onslaught of Napoleon’s militarily driven political restructuring of Europe’s German center. While Hegel eventually abandoned his German constitutional project under the rapidly changing political conditions and his equally swiftly shifting professional circumstances, he retained key concepts, fundamental distinctions, and core insights from his early politico-philosophical torso and recycled them in his later writings in political and legal philosophy and the philosophy of history.¹⁹ In retrospect, the so-called *German Constitution*, written with regard to a vanishing early

categorization of the work, see the editorial introduction in Hegel, *System der Sittlichkeit*, pp. ix–xxxix.

- 18 For a modern, critical edition of the work, see G. W. F. Hegel, “Fragmente einer Kritik der Verfassung Deutschlands (1799–1803),” in id., *Schriften und Entwürfe (1799–1808)*, ed. M. Baum and K. R. Meist. *Gesammelte Werke*, vol. 5 (Hamburg: Meiner, 1998), pp. 1–202. For present purposes, the more widely available edition in Hegel, *Werke*, 1: 461–581, which already tracks the layers and stages of the heterogeneous textual corpus, is sufficient and will be cited and quoted in what follows. The English translation in Hegel, *Political Writings*, 6–101 follows the edition in Hegel, *Werke*, 1: 461–581.
- 19 Hegel, *Elements*; Hegel, *Political Writings*; G. W. F. Hegel, *Philosophy of History*, trans. by J. Sibree (Kitchener: Batoche Books, 2001); G. W. F. Hegel, *Lectures on the Philosophy of World History*, vol. 1, *Manuscripts of the Introduction and the Lectures of 1822–3*, ed. and trans. by Robert F. Brown and Peter C. Hodgson (Oxford: Clarendon Press, 2011).

modern world of law and politics, contains elements for the constitution of its much more modern successor, viz., the post-revolutionary and post-Napoleonic world of the citizen-states (and of emerging nation-states) of monarchically ruled Continental Europe in the early nineteenth century.

Hegel's occupation with the Old Empire (*Altes Reich*), as it was called in its waning years, did not come out of nowhere. Rather Hegel's unfinished tract forms the end of a long line of juridico-political treatises, mainly from the seventeenth and eighteenth century and mostly authored by legal scholars in the German lands, on the constitutional structure and functioning processes of the Holy Roman Empire as a complex and elusive political body *sui generis*. By the late eighteenth century, this literature, which was later retrospectively termed "Imperial Public Law Literature" (*Reichspublizistik*), had grown quite specialized and outright stale. With its unusual vigor of argumentation and unexpected vehemence of judgment, Hegel's treatment of the matter harks back to an earlier famous as well as infamous exemplar of the species, the polemical tract *On the Constitution of the German Empire*, published pseudonymously in Latin (*De statu imperii Germanici*) by the academic jurist and natural lawyer Samuel Pufendorf in 1667.²⁰

In the sixth of altogether eight chapters of his short but incisive treatment of the German Imperial constitution Pufendorf seeks to ascertain the form of state of the Empire (*De Forma Imperii Germanici*), arguing in detail that it is neither a democracy nor an aristocracy nor a monarchy in the received sense of these typological terms.²¹ Pufendorf comes to the conclusion that the Empire ("Germany") is "akin to a monster" (*monstro simile*)²² since it exhibits elements of each constitutional type without really instantiating any of them. In particular, Pufendorf describes Germany's Imperial constitution as situated in between a moderate, limited monarchy and a federative state. Pufendorf's astute and sober assessment of the

20 S. de Monzambano, *De statu imperii Germanici*, ed. Fritz Salomon (Weimar: Böhlau, 1910); S. v. Pufendorf, *Die Verfassung des deutschen Reiches*, ed. and trans. by Horst Denzer (Frankfurt/M and Leipzig: Insel, 1994).

21 Monzambano, *De statu imperii Germanici*, pp. 98–107.

22 Monzambano, *De statu imperii Germanici*, p. 106; Pufendorf, *Die Verfassung des deutschen Reiches*, p. 198.

Imperial constitution as a monstrosity of sorts found its satirical summary when Voltaire a few decades later mocked Germany's Holy Roman Empire as being neither holy nor Roman nor an empire.

It is in this informal tradition of Imperial scolding that the famous opening sentence of Hegel's contribution to the literature on Imperial public law has to be placed, which reads: "Germany is no longer a state" (*Deutschland ist kein Staat mehr*) (Hegel, *Werke*, 1: 461; Hegel, *Political Writings*, 6). At least since Pufendorf, the Empire had not been viewed as a state in the standard sense, exemplified by other European political entities, whether absolute or limited monarchies, aristocratic or democratic republics or federations of one kind or another. But Hegel adds to this by then classical diagnosis the further pathological finding that Germany, however monstrous a state it used to be, no longer exists as a state at all.

Considered in a political perspective, the vanishing of German statehood that forms the object of Hegel's apodictic opening line is a result of the Empire's long-range centrifugal development during the course of which the constitutive members of the Empire ("Imperial Estates," *Reichsstände*)²³ – chiefly the ecclesiastical and secular princes of the Empire but also the Imperial counts, the Imperial knights and the Imperial cities – gained ever more independence from the federal political authority of the Emperor and grew into quasi-sovereign political entities of their own (Hegel, *Werke*, 1: 524–537 and 537–548; Hegel, *Political Writings*, 56–66 and 66–75). An especially glaring case that Hegel has in mind here is the kingdom of Prussia, relatively recently created out of the territorial extension of the former Duchy of Brandenburg, with large parts of the new Prussian lands situated in the East (chiefly East Prussia, with Kant's Königsberg as the capital) and lying outside the confines of the Old Empire altogether. In the mid-eighteenth century Prussia, under Frederick II ("the Great"), even engages in a series of protracted and eventually successful wars against Habsburg-ruled Austria – the Habsburgs being the very dynasty that provided the Empire

23 When referring to the constituent members of the Empire and their formal representation ("Estates"), the word "estate," generally translating the German *Stand* in its various meanings as a social, civil or political stratum, will be capitalized (and pluralized) throughout.

with its figurehead for the final three and a half centuries of its existence (Hegel, *Werke*, 1: 558–571; Hegel, *Political Writings*, 83–93).

Assuming a juridical perspective, Hegel traces the asserted end of German statehood (“statelessness”; Hegel, *Werke*, 1: 546; Hegel, *Political Writings*, 74) to the practical absence of “public law” (*ius publicum*) in the Empire’s constitution, the perceived focus of the pertinent previous legal literature (“Imperial public law”) on this very type of law notwithstanding. In early modern times, the academic discipline and the legal sphere of public law arises in the newly developing sovereign territorial states of (Western) Europe as a body of law specifically different from private law in the tradition of Roman civil law (*ius civile*).²⁴ As state law, modern public law delineates the legal relations between the sovereign state and its citizen-subjects. As international law or law of the peoples (*ius gentium*), it is concerned with the relations between sovereign states, chiefly regarding matters of war and peace. The pioneering author of early modern public law is the Dutch lawyer and jurist Hugo Grotius.²⁵

On Hegel’s analysis of the Imperial constitution, the relations among the political entities that make up the Empire – the Imperial Estates – and between those political entities and their respective citizen-subjects are not governed by the general regulations of modern public law but by pre-modern essentially private, custom-based, and quasi-contractual particular relations between the parties involved, effectively bypassing modern public law in favor of a multitude of legal constructions and arrangements that are private in nature and personal in character (Hegel, *Werke*, 1: 467f., 538; Hegel, *Political Writings*, 11f., 67). In essence, Hegel’s verdict on the Empire turns on the persisting remnants in the Imperial constitution of essentially medieval, “feudal” particular arrangements between lord and vassal, or of “lord” and “bondsmen” (*Herr, Knecht*), as Hegel would put it a few years later in *The Phenomenology of Spirit* (Hegel, *Werke*, 3: 145–155;

24 For a comprehensive history of public law in the German tradition, see M. Stolleis, *Public Law in Germany. A Historical Introduction from the 16th to the 21st Century*, trans. by Th. Dunlap (Oxford: Oxford University Press, 2017).

25 H. Grotius, *The Rights of War and Peace*, ed. R. Tuck. 3 vols. (Indianapolis: Liberty Fund, 2005).

Hegel, *Phenomenology*, 108–116 [translation modified]).²⁶ In light of this analysis, Hegel's opening verdict of Germany being no longer a state conveys the factual absence of state law *qua* public law regulating the relations between the Empire's constitutive members, including its head, and the citizenry. On Hegel's assessment, a state without genuine state law (public law) is no state at all.

In a historical and systematic context informed by Constant's dual focus on individual liberty and political representation, on the one side, and by Hegel's own later distinction between civil society and the state in *Elements of the Philosophy of Right*, on the other side, two features stand out in Hegel's early, somewhat rambling dissection of the German constitution: the historical analysis of the status and function of political representation in the Empire and the conceptual analysis of the two kinds of liberty or freedom (*Freiheit*)²⁷ characteristic of the Empire in general and of its declining development in particular. For Hegel, the two issues are intimately intertwined since the German constitution provides the Estates that make up the Empire with institutional political representation and the liberty afforded by the German constitution consists mainly in holding representative political power in the government of the Empire.

Unlike Constant, whose lecture on ancient and modern liberty treats political representation ("representative system") as a distinctly modern phenomenon, Hegel in the *German Constitution* assumes a broader, historical perspective and traces the modern institution of representation to its precursor in late Antiquity and the Middle Ages. In an outlook that anticipates the scope and intent of his later philosophy of world history, Hegel

26 The older rendition of the German *Knecht* in Hegel as "slave," chosen against the background of Marxian class struggle ("master-slave dialectic"), obscures the formative feudal background of Hegel's scenario.

27 The German word *Freiheit* employed by Hegel translates both as "freedom" and as "liberty." In the civico-political context under discussion in this contribution, the more appropriate translation is "liberty" – with a few exceptions, chiefly involving Hegel's technical terms "subjective freedom," "objective freedom," "substantial freedom," "concrete freedom," and "German freedom," as featured below, as well as the separate construction "freedom from ..." and the terminology of "freedom" employed in the main title and the section titles of this contribution.

introduces government by representation as a “third universal shape of the world spirit” (Hegel, *Werke*, 1: 533; Hegel, *Political Writings*, 63; translation modified), after the despotic form of government in the “oriental world” and the republican form of government in the “Roman world.” Hegel also provides a conjectural genealogy of the third type of rule by tracing it to the Germanic take-over of Roman-colonized Europe in late antiquity (Barbaric invasions) and the early medieval formation of a political successor structure to the vanquished and vanished (Western) Roman Empire through the Franks under Charlemagne and through later dynasties of German kings and emperors in the high Middle Ages and after.

In Hegel’s reconstructed genesis of the Imperial constitution, which is largely indebted to Montesquieu,²⁸ the form of rule imported into the Romanized world of North Western Europe by successive waves of invading Germanic tribal conglomerations comprises free men (the very meaning of the ancient appellation “Franks”) freely following an elected leader and sharing in the latter’s conquests of land and people. Under the demographically changed conditions of an eventual settled existence in new lands, the general representation in government on the part of the freemen changes from direct personal say to indirect vote by proxy. In particular, Hegel postulates the socio-economic differentiation of the newly established – originally Frankish, culturally (at least in part) Romanized and religiously Christianized – Empire into three “estates” (*Stände*) (Hegel, *Werke*, 1: 524–537; Hegel, *Political Writings*, 62–66), comprising the landholding nobility and the literate clergy, both of which share (at least at their higher echelons) in the exercise of representative political power, and a “third estate” (*dritter Stand*) (Hegel, *Werke*, 1: 532f.; Hegel, *Political Writings*, 63), composed of freemen mainly engaged in agriculture, crafts, and commerce and therefore no longer at leisure to involve themselves in politics and government, except through their eventual representation under the guise of a few dozen “free” Imperial cities included in the Empire’s evolving representative body (“Imperial Diet,” *Reichstag*).

While the world-historical sequential scheme of despotic, republican, and representative governmental forms introduced in the *German*

28 Montesquieu, *The Spirit of the Laws*, pp. 619–722.

Constitution, albeit only *en passant*, seem to be Hegel's own addition, which he would eventually expand to include four successive world-historical realms (by adding the "Greek world"), the typological treatment of representative government as Germanic in origin and (proto-)modern in character is due to an already established, though quite controversial tradition with which Hegel was familiar through his early and extensive studies of Montesquieu.²⁹ In *Spirit of the Laws*, drawing on earlier work by English writers advocating the constitutional limitations of monarchical rule, Montesquieu had introduced the political institution of "Gothic government" (*gouvernement gothique*), meaning the form of rule that was brought in and further developed by such invading Germanic tribes as the Goths, who stand here *pars pro toto*, and had singled out "Gothic [or Germanic] government," or rather its modern descendent – moderate, constitutional monarchy – as the "best kind of government men have been able to devise."³⁰

For Montesquieu, who considers monarchical, rather than (aristocratic or democratic) republican rule, as most suited to the sovereign territorial states of the modern era, representative government *à la gothique* combines the effectiveness of centralized monarchical power with the moderating, mitigating influence of intermediary political bodies, foremost among them the landed nobility and the learned judiciary, and the "third estate" as the body representing the interests of the broader, taxpaying population. In a historical perspective and with a political intent, Montesquieu defends a "Germanist" reading of the course of French political history since the division of the Frankish Empire into what was to become France

29 For a somewhat overextended interpretation of Montesquieu's methodological influence on the early Hegel, see B. Coppieter, *Kritik einer reinen Empirie. Hegels Jenaer Kommentar zu Montesquiueus Theorie des Politischen* (Berlin: Akademie Verlag, 1994). For Hegel's own later assessment of Montesquieu's lasting philosophical significance, see Hegel, *Werke*, 7: 35, 408 and 437f; Hegel, *Elements*, 29, 283 and 310.

30 Montesquieu, *The Spirit of the Laws*, 168. On Montesquieu's contribution to the early modern discourse on the "Gothic polity" and his influence on Hegel in that particular regard, see G. Zöller, "Participation of the People Through Its Deputies.' Montesquieu, Kant and Hegel on German Freedom," forthcoming in *Graduate Faculty Philosophy Journal* 42 (2021).

and Germany. According to this contested position, favored by independently minded provincial aristocrats like Montesquieu himself seeking to curb royal rule and courtly political culture, the French monarchs, from Hugo Capet onward, were not absolute rulers in the tradition of the later Roman Emperors but had the collegial position of being “first among equals” (*primus inter pares*) in the Germanic tradition of consensual rule over free people.

While Montesquieu’s introduction of “Gothic government” into the theory and practice of modern politics – and his associated defense of political and civil liberty – is part of a sustained, though veiled critique of contemporary French absolute monarchy that pervades large portions of *Spirit of the Laws*, Hegel’s *German Constitution* directs the lessons from Montesquieu to the peculiar situation of the German Empire in general and its vanishing statehood in particular. With the ever-increasing independence, not to say sovereignty, of the Imperial Estates, the representative principle that once guaranteed the cooperative governance of the Empire has lost its significance, Hegel argues. In modern times, so Hegel, “German freedom” (*deutsche Freiheit*) has come to mean not representative participation but “independence of the Estates” in the sense of freedom from the Empire and its rule, an almost anarchical freedom (Hegel, *Werke*, 1: 570; Hegel, *Political Writings*, 92).

On Hegel’s analysis, a critical consequence of the merely negative liberty of the Estates from the Empire is the effective loss of representation and hence of political liberty on the part of the broad population (“third estate”) that has become more and more subject only to the laws and regulation of the increasingly stronger local or regional authorities and rulers. The greater the negative liberty from Imperial rule on the part of the Estates (essentially the higher nobility and clergy), the smaller the positive liberty on the part of a population that is only inadequately represented in the Imperial Diet through the Imperial cities (Hegel, *Werke*, 1: 573; Hegel, *Political Writings*, 95).

Accordingly, Hegel’s proposal for constitutional reforms at the unfinished conclusion of the *German Constitution* includes the creation of a genuine political representation of the “third estate” in the Imperial Diet, which is to be achieved by adding chosen delegates from the entire, suitably

qualified population of the Empire to the already existing representation of the Imperial cities (Hegel, *Werke*, 1: 532f.; Hegel, *Political Writings*, 63f.). The proposal that the “third estate,” previously marginalized in the German constitution to the point of non-representation, is to be included in a reformed Empire, which thereby is transformed into a comprehensive or “universal state” (*allgemeiner Staat*; Hegel, *Werke*, 1: 534; Hegel, *Political Writings*, 64) representative and expressive of the citizenry’s common cause, will re-surface in Hegel’s mature political philosophy, albeit in suitably modified form given the Empire’s complete demise in the meantime.

3 Freedom Civil and Political

As the subtitle of the work – “Natural Law and Political Science in Outline” (Hegel, *Werke*, 7: 8f.; Hegel, *Elements*, 1) – suggests, Hegel’s *Elements of the Philosophy of Right* exceeds the narrow confines of the relatively recent academic discipline called “philosophy of law.” As a treatise that is, in part, on natural law, Hegel’s work follows the latter’s traditionally broad scope by including (individual) morals, (social) ethics, and (national) economics, in addition to private (or civil) and public (or political) law into the broad spectrum of *Elements of the Philosophy of Right*.³¹ As a textbook that deals, in part, with political science, Hegel’s work covers, in addition to the state in the narrow sense, which can be considered coextensive with “government” in the Anglo-American understanding of the term, further civico-political institutions operating independently of the state *qua* government, chiefly non-government forms of social, economic, and caritative or philanthropic self-organization.

The comprehensive character of *Elements of the Philosophy of Right* is obscured, or even lost, in the standard reception of Hegel as a philosopher of

31 For the introduction of the term and concept of “political law” or “political right” (*droit politique*) into political and legal philosophy in general and the account of public law (public right) in particular, see the complete title of Rousseau’s *Social Contract* in Rousseau, *Discourse*, p. 43.

the state (*Staatsphilosoph*) – and of the Prussian state of the post-Napoleonic Restoration era at that. In reality, Hegel's *Elements of the Philosophy of Right* is a complete philosophical account of human social existence in its entirety, even if only “in outline,” as specified in the concluding phrase of work's subtitle. Systematically speaking, the purview of Hegel's comprehensive and integrated “philosophy of right” is modern society in its main manifestations: from juridical law (“abstract right”) through personal morals (“morality”) to social *mores* (“ethical life”), with the latter including the realm of private life (“family”), the non-governmental public sector under government control and protection (“civil society”) and the specifically political sphere of government (“state”) (Hegel, *Werke*, 7: 5–7; Hegel, *Elements*, 3–8). Moreover, according to Hegel, the work as a whole represents the socially manifest reality of the actual world's inner nature as self-reverting, “free” thinking (“objective spirit”).³² Historically speaking, the horizon of *Elements of the Philosophy of Right* is not circumscribed by the time of its publication (or that of its writing) but by the long-term development of modern society and modern statehood between the German Reformation and the French Revolution along with the latter's aftermath – between Luther and Napoleon, so to speak.³³ Philosophically, *Elements of the Philosophy of Right* is positioned between conceptual argument and culturally steeped reflection – between Kant and Montesquieu, *pour ainsi dire*.

A short-sighted reduction of *Elements of the Philosophy of Right* to (specifically Prussian or generally Restoration-inclined) state apologetics not only distorts the mature Hegel's politico-philosophical agenda. It also obscures the complex self-positioning that Hegel undertakes in this work

32 On the material identity of *Elements of the Philosophy of Right* with the philosophy of objective spirit in Hegel, see G. Zöller, “Vom Geist der Gesetze zu den Gesetzen des Geistes. Hegel über Sittlichkeit und Geschichtlichkeit,” in *Objektiver und absoluter Geist nach Hegel. Kunst, Religion und Philosophie innerhalb und außerhalb von Gesellschaft und Geschichte*, ed. Th. Oehl and A. Kok (Leiden and Boston: Brill, 2018), pp. 720–739.

33 On Hegel's systematic linkage of Reformation and Revolution in German and French political history, see G. Zöller, “Keine Revolution ohne Reformation. Staat und Religion in Hegels *Enzyklopädie der philosophischen Wissenschaften*,” *Revista Opinião Filosófica* 8, 2 (2017): Hegel-Marx e a contradição que move a história, pp. 21–46.

with regard to the established and emerging alternatives in modern political thinking. The same holds for the opposite, progressivist interpretation of *Elements of the Philosophy of Right* as a clandestine defense and promotion of liberal reforms meant to democratize the existing, more or less reactionary European state of the early nineteenth century. In particular, anti-liberal and liberal readings of *Elements of the Philosophy of Right* alike seriously underestimate and generally overlook the complex blending of positions and perspectives that Hegel undertakes in his main work in juridido-ethico-socio-economico-political philosophy, which is neither right-Hegelian nor left-Hegelian in orientation and intent. Rather Hegel's pre-post-Hegelian project aims at synthesizing statist and antistatist, proto-liberal and proto-communal, paleo-individualist and paleo-collectivist orientations, and dimensions – with the result that it equally satisfies all those dual descriptions at once, as it satisfies neither of them at all.

The complex character of Hegel's project in *Elements of the Philosophy of Right* shows especially clearly in the work's treatment of the intrinsically interconnected issues of political representation and political liberty. While *Elements of the Philosophy of Right* in its entirety could be considered a philosophy of freedom,³⁴ the work culminates in the linkage of freedom *qua* liberty to political representation and in the articulation of liberty in accordance with the major differentiations of modern civico-political life. In particular, the mature Hegel distinguishes and relates civil and political liberty, just as he differentiates and connects civil and political representation – in both cases by recourse to an innovative, original, and far-reaching distinction between “civil society” (*bürgerliche Gesellschaft*) and the “state” (*Staat*) (Hegel, *Werke*, 7: 339; Hegel, *Elements*, 220), more precisely, the “political state” (*politischer Staat*) (Hegel, *Werke*, 7: 441; Hegel, *Elements*, 314). It is also in this civico-political double perspective on liberty and representation that the relation of Hegel's typology of liberty to Constant's two liberties becomes apparent.

34 For a revisionist reading of the entire Hegel as an unabashed philosopher of modern freedom, see K. Vieweg, *Hegel. Der Philosoph der Freiheit* (Munich: C. H. Beck, 2020). For a more mitigated interpretation of Hegel's foremost formal conception of freedom as ever attempted but never completely achieved absolute self-identity, see G. Zöller, *Hegels Philosophie. Eine Einführung* (Munich: C. H. Beck, 2020).

In *Elements of the Philosophy of Right* – but also in the preserved student transcripts of Hegel’s lectures on the topic, first given in Heidelberg and then in Berlin, and in the corresponding parts of the *Encyclopedia of the Philosophical Sciences* – Hegel distinguishes two types of body politic, differentially labeled “civil society” and “state.” The German term for the former is *bürgerliche Gesellschaft*, with the adjective *bürgerlich* deriving from the German noun *Bürger* designating the dweller of a city, a state, or a city state, and alternatively rendered with the Germanic English word “burgher” or its Latin-based counterpart “citizen.” As used by Hegel in a juridico-political context, *bürgerliche Gesellschaft* is the German translation for “civil society” in the Lockean sense of a body politic considered from the perspective of its constituent members, rather than from that of their government. A Marxist reading that renders *bürgerliche Gesellschaft* in socio-economic terms as “bourgeois society,” meaning a society run and ruled by its capital-owning burghers, loses sight of the primarily civico-political, rather than solely socio-economic dimension of Hegel’s concept.³⁵

The novelty that lies in Hegel’s idea of “civil society” does not reside in the concept itself, which already had an established use for designating the body politic in a citizen perspective. It is in the contrastive pairing of the civil conception of the body politic with an alternative, etatist conception of it – and this within the same, supposedly consistent account of things political – that the novelty of Hegel’s mature political thought resides. By dividing the body politic into its specifically civil and its narrowly political sphere, Hegel manages to allocate the different but complementary functions of the body politic to the two forms of civico-political organization so distinguished. In particular, Hegel is able to assign to “civil society” the citizens’ freely chosen actions and interactions in the public sphere and to attribute to the “state” the main, manifestly political functions of government.

35 On Marx’s appropriation of Hegel’s “civil society,” see G. Zöller, “‘The Communal Being, the Communist Being,’ Hegel and Marx on Civil Society and the Political State,” *Proceedings Hegel and Marx* (Beijing: Center for Marx-Engels Literature Research, Tsinghua University, 2017), pp. 32–38 (Chinese version) and pp. 39–48 (English version).

While affording the citizens a significant extent of liberty in their individual and social self-development and self-realization, the civil sphere for Hegel essentially includes, in addition to the economic sub-spheres of the free market (“system of needs”) and the self-organization of the professions and trades (“corporation”), the lawful regulation of private and public life through the executive organs (“police”), and the justice system (“administration of justice”) (Hegel, *Werke*, 7: 346; Hegel, *Elements*, 226). Accordingly, the public sphere of “civil society” in Hegel is neither reducible to an economic community of trade and exchange, nor is it devoid of governmental rules and regulations altogether. On the contrary, “civil society” is the state itself, in the latter’s guise as the minimal state that is an instrumental institution (“external state”) or a “state of [mere] need and [finite] understanding” (*Not- und Verstandesstaat*) (Hegel, *Werke*, 7: 340; Hegel, *Elements*, 221; translation modified), designed and intended to serve the secure exercise of the liberty of its citizens.

Viewed in a historical perspective, Hegel’s “civil society” satisfies the (proto-)liberal program of the limited state, arising out of Locke and introduced into the German late Enlightenment discourse by W. v. Humboldt’s treatise *On the Limits of State Action* from 1792 (Humboldt 1969), which was only partially published at the time and first made available in its entirety in the middle of the nineteenth century, just in time to inspire emerging political liberals like J. S. Mill. To be sure, less liberally and more idealistically inclined contemporaries of the young Hegel deride the minimal state as a “nightwatchman state” and oppose its lean lines with the ample vision of a utopian polity (“aesthetic state”) that is to offer the alienated modern individual spiritual redemption through quasi-artistic creativity (“free play”).³⁶

Hegel for his part seeks to supplement the liberal state of “civil society” with the “political state” as the seat of sovereign power over the internal and external affairs of the body politic. Moreover, rather than

36 F. Schiller, *On the Aesthetic Education of Man. In a Series of Letters*, ed. and trans. by E. M. Wilkinson and L. A. Willoughby (Oxford: Clarendon Press, 1968).

replicating the bottom-up self-organization of liberal “civil society,” the authoritative “political state” in Hegel exhibits a top-down constitution with a dynastic ruler (“monarch”) exercising “princely power” by appointing a professionally staffed government apparatus wielding executive and judiciary powers, while the legislative power is held by a bicameral body of delegates representing the country’s landed interests, on the one side, and those of commercial civil society, on the other side (Hegel, *Werke*, 7: 435; Hegel, *Elements*, 308). On Hegel’s analysis, each of the three political powers in the “constitutional monarchy” so defined contributes a “moment” derived from the classical constitutional types, with the result that the state’s constitution resembles a “mixed constitution” composed of a monarchical, an aristocratic, and a democratic moment within the framework of a modernized, moderate monarchy (Hegel, *Werke*, 7: 436; Hegel, *Elements*, 309).

Its ancient borrowings notwithstanding, Hegel’s modern mixed-constitutional state differs considerably from the political constitutions of antiquity, just as its liberty differs from the kind of liberty known to the ancients, so perceptively portrayed by Constant. Yet rather than stressing, like the latter, the exclusive disjunction of ancient and modern liberty, Hegel seeks to vindicate to the modern polity a twofold conception of liberty. On the one hand, Hegel recognizes modern, individual liberty as the hallmark of liberal living in the state *qua* civil society labeling that liberty “subjective freedom” (Hegel, *Werke*, 7: 399; Hegel, *Elements*, 276). On the other hand, he recognizes the need for a form of freedom that reaches beyond the individual liberty available in civil society. On Hegel’s historically informed but modern-minded account, this liberty is akin – not in form, but in function – to the specifically political, essentially public liberty known to and cherished by the ancients, while not being exclusive of the other, specifically civil, essentially private liberty sought by the moderns and provided by civil society. Hegel names this freedom “objective” or “substantial freedom” (Hegel, *Werke*, 7: 398f.; Hegel, *Elements*, 275f.). For Hegel, it is the hallmark of the modern polity to integrate civil liberty *qua* “subjective freedom” and political liberty *qua* “objective freedom” into a complex hierarchy of liberties which he terms “concrete freedom” (Hegel, *Werke*, 7: 406; Hegel, *Elements*, 282) and which constitutes the

“concrete state” (Hegel, *Werke*, 7: 477; Hegel, *Elements*, 347) of modern, civil as well as political liberty.³⁷

Further features that recall and retrieve, in suitably modified form, the classical precedent of supra-individual, “objective” civico-political institutions and practices in general and the customs and codes of ancient republicanism in particular, to be found in Hegel’s modern, but not just liberal political state, include the social binding function of “patriotism” (Hegel, *Werke*, 7: 413; Hegel, *Elements*, 288), the motivating role of “political virtue” (Hegel, *Werke*, 7: 398; Hegel, *Elements*, 275) and the civil founding force of social ethics (“ethical life,” *Sittlichkeit*) and religion *qua* cultus (Hegel, *Werke*, 7: 415–431; Hegel, *Elements*, 291–304).³⁸ To be sure, in Hegel’s modern state-cum-civil-society these formerly demanding devices of committed citizenship have taken on a less virile, less sacrificial and altogether less strenuous shape – as dutiful taxpaying, ceremonial loyalty to king and country, law abiding daily life, and assiduous church going.

More significant than these ancient, quasi-republican relics, transfigured as they appear in Hegel’s “political state,” is the integration of the modern (or rather post-antiquity) political institution of representation into Hegel’s polity, in which it serves as the latter-day substitute for the ancient device of (direct) political participation and is virtually coextensive with the modern version of political liberty. While Hegel does not locate

37 On the republican heritage in classical German philosophy in general, but especially in Kant and Hegel, see G. Zöller, *Res Publica. Plato’s “Republic” in Classical German Philosophy* (Hong Kong: Chinese University Press and Albany: State University of New York Press, 2015) and G. Zöller, “Republicanism Without Republic. Kant’s Political Philosophy In Its Historico-Systematic Context,” *Studia Kantiana* 18/3 (2020), pp. 11–44.

38 See also Hegel, *Werke*, 10: 365; G. W. F. Hegel, *Philosophy of Mind. Part Three of the Encyclopedia of the Philosophical Sciences (1830)*, trans. by W. Wallace (Oxford: Clarendon Press, 1894), p. 166. At the systematic level, religion *qua* civil religion links the state’s sphere of historically limited, “objective” spirit to the sphere of religion, art, and philosophy pertaining to historically comprehensive, “absolute” spirit. In *Elements of the Philosophy of Right* this transition is mediated by the sphere of “universal” or “world history.” See Hegel, *Werke*, 7: 503–512; Hegel, *Elements*, 372–380. On the various forms of transition involved, see also Zöller, “Vom Geist der Gesetze.”

political representation in the operations of civil society as such, which functions in the specifically civil rather than properly political sphere, he takes great pains to derive the institution and function of representation to be found in the political sphere ("political state") from the concrete composition of civil society.

In essence, for Hegel political representation as a key constitutional feature of the modern polity involves the introduction, by way of delegation, of the structure and stratification of civil society into the political sphere of legislation. While, on Hegel's assessment, the political state systematically and substantially surpasses civil society by adding an entirely different, genuinely political dimension to the familial and civil forms of social existence, the political sphere, with regard to its core political power of legislation, is essentially formed through the transformative integration of civil society's social differentiation into the state's legislative power structure.

In particular, Hegel's system of civico-political integrated representation maps the socio-economic stratification of civil society ("estates") onto the bicameral disposition of the legislative power. To be sure, the estates recognized by Hegel as composing civil society ("estates of civil society"; Hegel, *Werke*, 7: 474; Hegel, *Elements*, 344) and undergoing differential transformation into politically representative estates ("estates in the political sense"; Hegel, *Werke*, 7: 474; Hegel, *Elements*, 344) are not akin to the largely independent member states (and member cities) of the former German constitution ("Estates"), previously analyzed by Hegel. Still Hegel's treatment of the matter in *Elements of the Philosophy of Right* follows the general representative principle that the full, "free" members constituting the body politic (whether principalities and cities or socio-economic classes, whether "Estates" or "estates") are to be involved, however indirectly and in a mediated fashion, in the government of that body.

A further formative influence stemming from the treatment of the traditional Estates in the *German Constitution* and shaping the double account of civil society and the state in *Elements of the Philosophy of Right* is the intermediary position and connective function of the "estate element" (Hegel, *Werke*, 7: 468; Hegel, *Elements*, 339; translation modified) between the state *qua* government and the infinitely varied interests of the population mass. According to Hegel, the estates serve as organizational

schemes for channeling and promoting the main, essentially class-specific orientations among the polity's complex constituency. Rather than being an outdated remnant from Germany's pre- and early-modern past, the modernized estates in *Elements of the Philosophy of Right* mark the entry point for the political representation of plural positions and competing interests – of “factions,” as they were termed in the American constitutional debate of the late 1780s.³⁹

Hegel distinguishes three main socio-economic “classes” (Hegel, *Werke*, 7: 390; Hegel, *Elements*, 267) that make up civil society and pre-delineate the composition of the state's legislative power. In line with the logical structure of nested triads that constitutes the inner organization of *Elements of the Philosophy of Right*,⁴⁰ the three estates receive material, historically specific as well formal, logically cast characterizations. In particular, Hegel identifies the “agricultural estate” occupied with the cultivation of arable land that is held in private property as the “substantial or immediate estate,” the estate of trade and industry engaged in the formation of products and the trading of goods as the “reflecting or formal estate” and the estate comprised of trained professionals and civil servants that lend their training to others and to the civico-political whole, respectively, as the “universal estate” (Hegel, *Werke*, 7: 355–357; Hegel, *Elements*, 234–237).

Hegel's political focus in developing the functional stratification of civil society is the latter's specifically modern trait of not letting tradition, chance, or circumstance alone determine membership in any one of the estates and their subdivisions. Instead, talent and merit are to figure significantly in an individual's life choices and career path (Hegel, *Werke*, 7: 358f.; Hegel, *Elements*, 237f.). Historically speaking, this social-revolutionary move was epitomized by Napoleon who recalled in a recorded conversation on St. Helena in 1817 – just three years before the publication of *Elements of the Philosophy of Right* – the civico-political principle (“maxim”) he had sought

39 A. Hamilton, J. Madison and J. Jay, *The Federalist With Letters of “Brutus,”* ed. T. Ball (Cambridge: Cambridge University Press, 2004), p. 41.

40 For a sustained but somewhat strained “logical” reading of *Elements of the Philosophy of Right*, see K. Vieweg, *Das Denken der Freiheit. Hegel “Grundlinien der Philosophie des Rechts”* (Munich: Wilhelm Fink, 2012).

to maintain throughout in his fight against the established rule of social privilege and class prejudice: *La carrière ouverte aux talents*.⁴¹

Moving from the original role of the estates in civil society to their political function in state legislation (Hegel, *Werke*, 7: 468–482; Hegel, *Elements*, 339–353), Hegel stresses the cooperative, rather than antagonistic, relation between the “political estate element” (Hegel, *Werke*, 7: 474; Hegel, *Elements*, 344; translation modified) and the two other political powers involved in legislation, viz., the monarch as symbolic sovereign and the government in the narrow sense as the state’s executive power (Hegel, *Werke*, 7: 468; Hegel, *Elements*, 339). By making the estates as they are differentiated in civil society – rather than the undifferentiated populace at large or the additive sum of “atomistic” (Hegel, *Werke*, 7: 473; Hegel, *Elements*, 343) individuals – the basis and medium of political representation, Hegel seeks to balance society’s need for the effective representation of its main but varied interests with the state’s constitutive concern for the common good, thus assuring the meaningful integration of civil and political life.

In view of the heterogeneity of the estates composing civil society, Hegel specifies a two-partite division for the estates’ political representation – along the lines of the essentially different collective interests involved (Hegel, *Werke*, 7: 481; Hegel, *Elements*, 351) – into a separate legislative “chamber” (Hegel, *Werke*, 7: 481; Hegel, *Elements*, 351; translation modified) each for the landowning estate (practically speaking, the landed nobility and other large-scale landlords) and for the two estates essentially owning “movable” goods (including technical skills and professional qualifications) (Hegel, *Werke*, 7: 474–478; Hegel, *Elements*, 345–348). With regard to the latter chamber, the differential representation of the second and third civil estate under the guise of one political estate (“third estate”) is to track the formers’ division into associations, communities, and corporations of all sorts, thus mirroring civil society’s diverse but structured composition at the political, legislative level. The delegates are to be chosen as representatives from among civil society’s various but well-defined collective

41 B. E. O’Meara, *Napoleon in Exile. Or, A Voice from St. Helena*, 5th edn, vol. 1 (London: Simpkin and Marshall 1822), p. 405.

interests and are to serve the socio-economically differentiated common good in the political arena of legislative deliberation and decision.

In spirit as well as letter (with the very term “estate” [*Stand*] possessing a civico-political double meaning), the collective composition of modern political representation in *Elements of the Philosophy of Right* follows the precedent of pre- and early-modern forms of representation in general and those of the German constitution, as previously analyzed by Hegel himself, in particular. Historically speaking, the former “third estate” has morphed into the core of the state’s legislative body. Systematically speaking, the politically entitled estates introduce an element of broad, popular representation into the state’s legislative power. While not satisfying later liberal demands for genuinely democratic parliamentary representation,⁴² the principle of political representation by estates, rather than by popular individual vote, can be seen to reflect the seemingly diverse, but actually quite structured complexity and heterogeneity of modern society – a predictable plurality that finds expression in the partisan politics of liberal democracy today with its essentially socio-economically defined political parties, interest groups and other forms of the self-organization of civico-political life. As Hegel knew, in the modern world the political state tracks civil society and political liberty follows civil liberty.

42 On Hegel’s critique of the “democratic element” in legislative representation, see Hegel, *Werke*, 7: 477f.; Hegel, *Elements*, 347f.

4 Hegel's Political Organicism

A Proposal for Renewal

1 Introduction

The theory of the state contained in Hegel's *Philosophy of Right* (hereinafter *PhR*)¹ has been understood as a form of political organicism since the end of the nineteenth century and the beginning of the twentieth.²

- 1 I use the following edition of the *PhR*, the paragraphs and page numbers of which appear in parentheses in the body of the text, followed, if necessary, by the page number of the English translation in square brackets. G. W. F. Hegel, *Grundlinien der Philosophie des Rechts* (Hamburg: Felix Meiner Verlag, 2013). English translation: G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. by H. B. Nisbet (Cambridge: Cambridge University Press, 2003). When I quote the *Zusätze* by Eduard Gans, I use this edition: G. W. F. Hegel, *Grundlinien der Philosophie des Rechts*, in G. W. F. Hegel (ed.), *Werke* (hereinafter: *Werke*), Band 7 (Frankfurt a. M.: 1986). The English translation is the same in both cases. Unless stated otherwise, all translations are my own.
- 2 See for instance: A. Th. Van Krieken, *Über die sogenannte organische Staatstheorie. Ein Beitrag zur Geschichte des Staatsbegriffs* (Leipzig: Dunker und Humblot, 1873); J. McTaggart and E. McTaggart, *Studies in Hegelian Cosmology* (Cambridge: Cambridge University Press, 1901); F. W. Coker, *Organismic Theories of the State. Nineteenth Century Interpretations of the State as Organism or as Person* (New York: Columbia University, 1910); H. Heller, *Hegel und der nationale Machtstaatsgedanke in Deutschland. Ein Beitrag zur politischen Geistesgeschichte* (Berlin and Leipzig: B. G. Teubner, 1921). More recently: Th. Petersen, "Staat als politischer Organismus. Hegels Verständnis der institutionellen Struktur des modernen Staates," in W. Pauly (ed.), *Der Staat – eine Hieroglyphe der Vernunft. Staat und Gesellschaft bei Georg Wilhelm Friedrich Hegel* (Baden-Baden: Nomos Verlagsgesellschaft, 2009), pp. 137–153.

Few nowadays, however, would regard presenting it as such as a sound defense, our contemporary political sensibilities being rather reluctant to associate the political and the biological. Indeed, this theory of the state has attracted numerous criticisms from a wide range of thinkers. Karl Popper once associated Hegel's organicism with the historical experience of totalitarianism,³ while some time later Donna Haraway united the organic representation of society in the same conceptual constellation as white capitalist patriarchy.⁴ More recently, Roberto Esposito has related political organicism to authoritarian biopolitics.⁵ Taken from diverse historical contexts, these three examples indicate the sharp criticisms any vindication of political organicism is likely to face.

Organicist rhetoric in political discourse is still read as a sobering tale of conformism. Sometimes it is even directly identified with the arsenal of immunological metaphors that speak darkly of "social diseases" and internal enemies that need to be "removed from the social body" to preserve "the health of the people." In this essay, against this usual interpretation, I propose a renewed reading of Hegel's political organicism for the present day based on three thematic nuclei found in the *PhR* that remain valuable for contemporary social and political philosophy: (1) the mutual dependence of the whole and the part in ethical life; (2) the threefold syllogistic mediation that articulates civil society with the state and the powers of the state with each other; and (3) the conception of the people as an organic whole. Expounding on these ideas, I argue that far from being an essentially conservative theory of social order, political organicism advances a conception of society and the state as a theoretical bulwark both against liberal atomism and the totalitarian subjugation of individual freedom. This reappraisal of Hegel's organicism starts, as in the first nucleus, from an understanding of society as a single body (not homogeneous, of course, but multicultural and even plurinational), which makes every intersubjective relationship a

- 3 K. R. Popper, *The Open Society and Its Enemies*, vol. 2, *The High Tide of Prophecy: Hegel, Marx, and the Aftermath* (London: George Routledge & Sons, Ltd, 1947), p. 29.
- 4 D. Haraway, *Simians, Cyborgs, and Women. The Reinvention of Nature* (New York: Routledge, 1991), pp. 161–162.
- 5 R. Esposito, *Bios. Biopolitica e filosofia* (Torino: Einaudi, 2004).

bond of corporal interdependence that demands an affirmative biopolitics on the part of the state. In line with this, instead of reciprocal tension, it emphasizes the moment of harmony that must exist between the powers of the state such that political conflicts are resolved in the appropriate institutional spaces. Regarding the second nucleus, political organicism is associated with a defense of the legitimacy of state intervention in private activity while continuing to value the mediating role of the individual as individual, as well as recognizing civil society organizations as key to popular participation. The third nucleus, finally, presents a complex conception of descriptive representation that can be associated with a “politics of presence” based on the equal recognition of every social group.

In the first part of this essay I expound these three nuclei of Hegel's political organicism. In the second part I propose an outline for renewed consideration of his organicism based on concrete examples put forward by readers of Hegel from contemporary social and political philosophy.

2 Nuclei of Hegel's Political Organicism

Hegel's political organicism is set out clearly in the section dedicated to Constitutional Law (*inneres Staatsrecht*) in the *PhR*. There are three key images that could be considered the nuclei of his organicism: (1) the constitution as a self-related state organism; (2) the organic articulation of state powers in accordance with the determinations of the concept; (3) the people understood not as an accumulation of independent individuals but as a civil society articulated in estates and corporations.

2.1 *The Constitution as an Organism*

In the division of Constitutional Law (§§260–320) explained in terms of the Idea of the state, there is a formula that Hegel uses on several occasions: The state is firstly, that is, considered in itself, a “self-related organism” or self-referential organism (*sich auf sich beziehender*

Organismus).⁶ Hegel says: “The Idea of the state (a) has *immediate actuality* and is the individual state as a self-related organism – the *constitution* or *constitutional law*.”⁷ The constitution, the main issue of *Innere*

- 6 *PhR*, §259, p. 236 [281]. In the *Lectures on Philosophy of Right* dictated in Heidelberg in 1817–1818, according to Wannenmann’s manuscript (hereinafter: *Rph* 1817–1818), this formula appears as follows: “The life of the state is (1) its organism in reference to itself as *Constitutional Law*.” G. W. F. Hegel, *Vorlesungen über die Philosophie des Rechts*, in *Gesammelte Werke*, Band 26.1 (Hamburg: Felix Meiner Verlag, 2013), §126, p. 152. In the first *Lectures on Philosophy of Right* that Hegel dictated in Berlin between 1818 and 1819, according to Homeyer’s manuscript (hereinafter: *Rph* 1818–1819), he affirms: “The idea of the state [he no longer says ‘life’] is, (1) as an individual state, the organism of the state in reference to itself: *Constitutional Law*.” *Ibid.*, §115, p. 309. In the *Lectures on Philosophy of Right* for the following winter semester, according to an anonymous manuscript (hereinafter: *Rph* 1819–1820 [Anonymous]), he says: “We consider first the state as an organism in itself, which refers to itself. This is the object of *Constitutional Law*.” G. W. F. Hegel, *Philosophie des Rechts. Die Vorlesung von 1819/20 in einer Nachschrift*, ed. D. Henrich (Frankfurt a. M.: Suhrkamp, 1983), pp. 225–226. In Ringier’s manuscript of these lectures (hereinafter: *Rph* 1819–1820 [Ringier]) he says instead: “We must now consider the idea of the state in three stages: (1) as an organism that refers to itself: *Constitutional Law*.” G. W. F. Hegel, *Vorlesungen über die Philosophie des Rechts*, in *Gesammelte Werke*, Band 26.1 (Hamburg: Felix Meiner Verlag, 2013), p. 162. In the *Lectures on Philosophy of Right* of 1822–1823, according to Hotho’s manuscript (hereinafter: *Rph* 1822–1823), when Hegel refers to the constitution, the image of the organism reappears, but now without the self-referentiality: “The living organism is always the one that contains in itself the greatest determinity [*die meisten Bestimmtheiten*], and the organism has its life in the activity of the particular members who all, even the smallest [*die particulareren*] produce and maintain the whole. The political constitution is, like the vitality of the organism, an image, a realization of rationality.” G. W. F. Hegel, *Vorlesungen über die Philosophie des Rechts*, in *Gesammelte Werke*, Band 26.2 (Hamburg: Felix Meiner Verlag, 2015), p. 1002. In the *Lectures on Philosophy of Right* of 1824–1825, according to Griesheim’s manuscript (hereinafter: *Rph* 1824–1825), something similar occurs. At the beginning of the treatment of *Constitutional Law*, Hegel affirms: “We then have to consider the state as it produces itself as a perfect organism.” G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, ed. K.-H. Ilting, Band 4 (Stuttgart-Bad Canstatt: Frommann-Holzboog, 1974), p. 635.
- 7 *PhR*, §259, p. 236 [281].

Staatsrecht, expresses the organic nature of the state, the fact that it is a self-related organism.

This conception soon reappears in §267 and, fundamentally, in §269. There Hegel maintains that the state, and especially its constitution, is an “organism” because in the division of its powers and in its specific functions it displays that which characterizes the Idea. For, just as the Idea develops in nature and in spirit through real differences, so the internal differentiation of the state manifests as the division of powers. Thanks to this differentiated development, “the universal continually *produces* itself.”⁸ Differences do not undermine universality but, on the contrary, sustain it. In this sense, integration can occur precisely because the differentiation of the state is determined by the nature of the concept. Far from being arbitrary or contingent, this differentiation is necessary given that it embodies the same distinctions found in the concept: universality, particularity, and singularity.

The Addition to §269 reads: “If the two [aspects] diverge and the different aspects break free, the unity which the constitution produces is no longer established. The fable of the belly and the other members is relevant here.⁹ It is in the nature of an organism that all its parts must perish if they do not achieve identity [*zur Identität übergehen*] and if one of them seeks independence.”¹⁰ The subordination of the parts with respect to the whole is characteristic of everything organic, but specifically of the animal

8 *Ibid.*, §269, pp. 244–245 [290].

9 The fable Hegel refers to is *Of the stomach and the members*. When the plebeians rebelled against the patricians in 494 BC, the Roman consul Menenio Agrippa gave a speech to the rebels in the Mons Sacer camp which led them to abandon their cause. He told them that the members of the body once rebelled against the stomach on the grounds that the stomach lay about lazily while they did all the work. The stomach replied that the members only got their food only thanks to its thankless labor of digestion. Agrippa draws a parallel between the members of the body and the rebellious commoners, on the one hand, and between the stomach and the Roman Senate, on the other. The moral is obvious: all the members and organs must collaborate for the health of the body without seeking independence, for their well-being depends on the health of the body as a whole. See the English edition of the *PhR* for the editor's note on p. 458. The original source for the fable is Livy's *History of Rome*.

10 *PhR*, §269, Zusatz, p. 415 [290]. Cf. *Rph* 1824–1825, p. 644.

organism.¹¹ Thus, the state is governed by the prescription that none of its parts attain such a degree of autonomy as to endanger the health of the whole. As in Agrippa's fable of the stomach and the members, all organs must seek the well-being of the organism; yet this does not undermine their own well-being but, rather, ensures it.

In §271 Hegel once more links the political constitution with the organism of the state. He says: "The political constitution is, *first*, the organization of the state and the process of its organic life *with reference to itself* [*in Beziehung auf sich selbst*], in which it differentiates its moments within itself and develops them to *established existence* [*zum Bestehen*]."¹² The constitution expresses the organic life of the state, exhibits the state's internal organization as it is objectified in actual institutions. This internal

11 See: K. Brinkmann, "Hegel on the Animal Organism," *Laval théologique et philosophique*, vol. LII, no. 1 (1996), pp. 135–153; C. Ferrini, "The Transition to Organics: Hegel's Idea of Life," in S. Houlgate and M. Baur (eds), *A Companion to Hegel* (Oxford: Wiley-Blackwell, 2011), pp. 203–224. This kind of reference to the animal organism justifies alone the need to relate the *PhR* with the Philosophy of Nature, especially the "Organic Physics" (*Organik*). In this line of research the following works can be cited: Th. Khurana (ed.), *The Freedom of Life. Hegelian Perspectives* (Berlin: August Verlag, 2013); L. Illetterati, "The Concept of Organism in Hegel's Philosophy of Nature," *Verifiche*, vol. XLII, no. 1–4 (2014), pp. 155–156; W. Furlotte, *The Problem of Nature in Hegel's Final System* (Edinburgh: Edinburgh University Press, 2018). See also my paper: E. Assalone, "El sentido de la 'vida' ética. Problemas e hipótesis en torno a la relación entre la *Filosofía del Derecho* y la *Filosofía de la Naturaleza* en el sistema hegeliano," in H. Neumann, O. Cubo and A. Bavaresco (eds), *Hegel y el proyecto de una Enciclopedia Filosófica: Comunicaciones del II Congreso Germano-Latinoamericano sobre la Filosofía de Hegel* (Porto Alegre: Editora Fi, 2017), pp. 141–161. The connections between the *PhR* and the Logic must also be taken into account in this regard, since the Logic includes a discussion of life in the section on the Idea. See: G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse 1830*, Erster Teil. Die Wissenschaft der Logik, in *Werke*, Band 8 (Frankfurt a. M.: Suhrkamp, 1986) (hereinafter: *Enz.*, I), §§216–222. See also: G. W. F. Hegel, *Wissenschaft der Logik II*, in *Werke*, Band 6 (Frankfurt a. M.: Suhrkamp, 1986) (hereinafter: *WdL*, II), pp. 469–487. On this subject, see: A. Sell, *Der lebendige Begriff. Leben und Logik bei G. W. F. Hegel* (Freiburg and München: Verlag Karl Alber, 2013); K. Ng, *Hegel's Concept of Life. Self-Consciousness, Freedom, Logic* (Oxford: Oxford University Press, 2019).

12 *PhR*, §271, p. 258 [304].

aspect of the state must be complemented by its external aspect, its relation to other individual states, which is the sphere of International Law (*Äußere Staatsrecht*). The third perspective is that of World History “as an absolute power in relation to individual states” (§259), as the “world’s court of judgement” (§340) or as the highest right of all.¹³

The state is a self-referential organism in a literal, not a metaphorical sense.¹⁴ This means that the different organic images that run through the entire *PhR* allude to the life of the state, which is as living as any plant or animal except that it is not a natural organism but a spiritual or “volitional” one (*Willensorganismus*).¹⁵ Like any organism, it presents a differentiated internal structure according to the concept, which is expressed in the political constitution; yet at the same time it is a structure endowed with unity, identity, and subjectivity: There is in it a unifying center that turns all internal differences, every part, into an “ideal” moment of its own, that is,

13 The division of the section on the state into Constitutional Law, International Law and World History follows an organicist criterion, insofar as the same structure of organic nature is found here, namely, (1) the “figure” (*Gestalt*), that is, the organism only referred to itself; (2) “assimilation” (*Assimilation*), which implies a relationship between the organism and its environment – what Hegel calls “inorganic nature” –; and (3) the “genus process” (*Gattungsprozeß*), by which the organism reproduces the species in the form of another singular organism. See: G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse 1830*, Zweiter Teil. Die Naturphilosophie, in *Werke*, Band 9 (Frankfurt a. M.: Suhrkamp, 1986) (hereinafter: *Enz.*, II), §§ 350–375. This parallel is established by Hegel himself in *Rph* 1817–18 (see: §126, Anm.). Kosmas Psychopedis relates the division of the section on the state to the presentation of the syllogisms of the living in the Logic (see: *Enz.*, I, §§ 218–220). K. Psychopedis, “Zur Logik des Organischen in der Hegelschen Rechtsphilosophie,” in A. Arndt, J. Zovko and M. Gerhard (eds), *Das Leben denken. Hegel-Jahrbuch 2006* (Berlin: Akademie Verlag, 2006), pp. 361–367.

14 I outlined my position on this question in the following paper: E. Assalone, “El Estado como organismo en la *Filosofía del Derecho* de Hegel. Discusiones en torno al carácter metafórico o literal del Estado-organismo,” *Revista Eletrônica Estudos Hegelianos*, vol. XV, no. 26 (2018), pp. 129–151.

15 L. Siep, “Hegels Theorie der Gewaltenteilung,” in H.-Ch. Lucas and O. Pöggeler (eds), *Hegels Rechtsphilosophie im Zusammenhang der europäischen Verfassungsgeschichte* (Stuttgart-Bad Canstatt: Frommann-Holzboog, 1986), p. 411.

into a “member” (*Glied*). As such, the member does not exist independently of the whole but essentially depends on it; yet the opposite is also true, for the whole itself would not survive without the members. For this reason, one can speak of a double structural dependency of the state organism.

The mutual dependence of the whole and the parts is less concerned with giving an edifying account of the importance of each proudly occupying their pre-established place in the system than with offering a highly plastic representation of two independent and complementary theoretical-political theses. There is a communitarian or anti-contractualist thesis according to which the state, the whole, should not be understood as the result of any agreement between individuals, but rather as having ontological priority over them and, therefore, a right over them.¹⁶ And there is a liberal thesis that affirms that every person is an end in herself, which is the conceptual starting point of the *PhR* and which dovetails with what Hegel considers the great achievement of modernity: respect for the particular.¹⁷

If the state is indeed an organism, “there must be life in each part of the state,” as Frederick Beiser brilliantly puts it.¹⁸ This means that there cannot be any kind of “mechanical” grouping within a rational state, whether constituted extrinsically, randomly, or by force. There can be no “rabble” (*Pöbel*), for example, a group of people who do not have access to the minimum of material resources to survive.¹⁹ Beiser claims that the state must

16 This is what Siep calls “ontological holism.” L. Siep, “Hegels Holismus und die gegenwärtige Sozialphilosophie,” in L. Siep (ed.), *Aktualität und Grenzen der praktischen Philosophie Hegels. Aufsätze 1997–2009* (München: Wilhelm Fink Verlag, 2010), pp. 147–160.

17 See: *PhR*, §260 and §260, Zusatz. Cf. *Rph* 1824–1825, p. 635. In this regard I follow Beiser’s interpretation: F. Beiser, *Hegel* (London and New York: Routledge, 2005), pp. 239–243. Michael Quante claims, similarly, that Hegel’s *PhR* combines a holistic social philosophy with a liberal conception and therefore advances a particular “liberal communitarianism” capable of overcoming the contemporary opposition between liberalism and communitarianism. M. Quante, *Die Wirklichkeit des Geistes. Studien zu Hegel* (Berlin: Suhrkamp, 2011), Chap. 12.

18 Beiser, *Hegel*, p. 240.

19 See: *PhR*, §244. As Frank Ruda points out, the rabble evokes the danger of the appearance of an inorganic ensemble, of the disorganization of civil society within the organic state. F. Ruda, *Hegel’s Rabble. An Investigation into Hegel’s Philosophy of Right* (London and New York: Continuum, 2011), p. 90.

respect the rights of individuals as individuals and insists on the necessity of autonomous groups (groups not entirely subject to the central administration) who represent particular economic interests while remaining committed to local government.²⁰

Regardless of the specific nature of the vitality found in each part of the state, the essential thing for a living organism is that both the whole and the parts are alive, and that means that both the whole and the parts must enjoy relative autonomy.

2.2 *The Organic Articulation of the State*

Hegel's political organicism also offers a criterion for the division of the powers of the state and their correct articulation for the state to be truly "the actuality of the ethical Idea"²¹ and its political constitution to be "developed and actualized rationality," the "firm foundation of the state and of the trust and disposition of individuals towards it."²²

"The constitution is rational," Hegel explains in this regard, "in so far as the state *differentiates* and determines its activity within itself *in accordance with the nature of the concept*."²³ The internal differentiation of the state must correspond to the differentiation of the concept itself: universality, particularity, singularity or, in political terms, the legislative power, the executive power, and the power of the sovereign, respectively.²⁴ The three powers are not independent realities but ideal differences, subordinate to the same unitary center. For this reason they cannot be in permanent conflict with each other, not even in a tense harmony arising from mutual counterpoise. Hegel says specifically: "In this view, the reaction of each power to the

20 Beiser, *loc. cit.* It is necessary to qualify the level of autonomy that Beiser confers on these interest groups since, as Hegel has specifically pointed out in his lectures, corporations must always come "under the higher supervision of the state." *PhR*, §255, Zusatz, p. 397 [273]. Cf. *Rph* 1822–1823, p. 997.

21 *PhR*, §257, p. 231 [275].

22 *Ibid.*, §265, p. 243 [287].

23 *Ibid.*, §272, p. 259 [305].

24 *Ibid.*, §273.

others is one of hostility and fear, as if to an evil, and their determination [*Bestimmung*] is such that they oppose one another to produce, by means of this counterpoise, a general equilibrium rather than a living unity.”²⁵ This mechanical conception of powers is typical of the understanding; it is “a mere intellectual constitution” (*Verstandesverfassung*).²⁶ In a rational state, on the contrary, the powers are in an “organic unity” in which “it is implicit [...] that *one* and the same spirit decrees the universal [i.e., the law] and brings it to determinate actuality in implementing it.”²⁷ The unity of the state is the unity of the spirit of a people (*Volksgeist*). The organicist conception of the division of powers that Hegel defends follows from this.

Some scholars have highlighted the syllogistic nature of the organic articulation of state powers. They take as reference a passage from the “absolute mechanism” of the *WdL* and the Logic of the *Enz*. There, using an example from the realm of the Objective Spirit, Hegel explains how the solar system can be understood as an absolute mechanism. The State is a system articulated around three syllogisms, just like the solar system. In the first syllogism, mediation is exercised by particular needs, and the singularity of the person is mediated by the universality of laws, government, etc. In the second syllogism, mediation now corresponds to the individual as singularity, and the particularity of needs is mediated by the universality of common interest. Finally, in the third syllogism, the mediating term is the universal, through which the singular ends of the individual and their particular needs are met. The ethical whole is sustained by this mediation of the terms with themselves. For Hegel, if we do not understand this syllogistic operation, we have no understanding of the internal articulation of the social whole.²⁸

25 *Ibid.*, §272, Anm., p. 260 [306].

26 G. W. F. Hegel, *Enzyklopädie der philosophischen Wissenschaften im Grundrisse 1830*, Dritter Teil. Die Philosophie des Geistes, in *Werke*, Band 10 (Frankfurt a. M.: Suhrkamp, 1986), § 544, Anm., p. 345 [245]. English translation (page number in square brackets): G. W. F. Hegel, *Hegel's Philosophy of Mind*, trans. by W. Wallace and A. V. Miller (Oxford: Clarendon Press, 2010) (hereinafter: *Enz.*, III).

27 *PhR*, §299, Anm., p. 288 [338].

28 Hegel puts it very clearly: “It is one of the most important insights of logic that a specific moment which, when it stands in opposition, has the position of an

These three syllogisms have been translated into the internal functioning of the state with its division of powers. Thus, Michael Wolff maintains that the executive power corresponds to the syllogism in which mediation is exercised by the particular, the legislative power to the syllogism whose middle term is the universal, while the power of the sovereign corresponds to the mediation of the singular.²⁹ However, this organicist feature of the Hegelian conception of the division of powers is not limited to the state itself but encompasses the broader relationship between the state and civil society. Therefore, the meaning of these three ethical syllogisms is more expansive than might appear at first and reveals how Hegel conceived of the roles of the state, intermediary organizations, and citizens in modern ethicality.³⁰

According to this reading, the mediation of the particular means that citizens' particular needs allow them to transcend their immediate singularity to the universality of the state. For a specific individual to adopt a universalist perspective oriented toward the common good, they must be socialized in particularistic spaces such as corporations, where people come together around common interests based on their special social position as economic agents. Without this intermediate level of socialization, this first but partial universalization, the natural individual will not become a citizen.

The mediation of the singular picks up where the particular leaves off. Now ethically universalized, the individual will have become capable of exercising a mediating role between the particular interests of their social sector and the general interests overseen by the state. It is always

extreme, loses this quality and becomes an *organic* moment by being simultaneously a *mean* [Mitte]." *Ibid.*, §302, Anm., p. 292 [342].

29 M. Wolff, "Hegels staats-theoretischer Organismus: Zum Begriff und zur Methode der Hegelschen 'Staatswissenschaft,'" *Hegel-Studien*, no. XIX (1984), pp. 147–177.

30 Moreover, this syllogistic interpretation of the powers is by no means incompatible with other works that shed light in this question, though their approach may vary. See: *ibid.* See also: P. Becchi, "La doctrina hegeliana del organicismo político," *Escritos de Filosofía*, vol. XIII, no. 25–26 (1984), pp. 75–99; D. Henrich, "Logical Form and Real Totality: The Authentic Conceptual Form of Hegel's Concept of the State," in R. B. Pippin and O. Höffe (eds), *Hegel on Ethics and Politics* (Cambridge, Cambridge University Press, 2004), pp. 241–267; N. Ross, *On Mechanism in Hegel's Social and Political Philosophy* (New York: Routledge, 2008).

concrete individuals who are selected on the basis of their specific talents to represent their estate before the state or, conversely, represent the state before civil society as public officials. This syllogism is also the basis for embodying state sovereignty in the prince qua individual so as to confer unity and individuality on the state. A need that, in our days, could well be satisfied through institutional and socially consolidated personal political leadership.³¹ Presidents, prime ministers, leaders of the opposition, and referents of social and political movements often serve as vessels of the values of a people – whether simply owing to their position or due to their virtues or unique life stories – and may become conductors of historical processes of institutional consolidation and transformation.

The mediation of the universal closes the circle: It is the universal that is particularized, that realizes the general will and satisfies social and individual needs. Here we see the state intervening in civil society to invest in the infrastructure required to develop private business, correcting the inequalities generated by economic activity, and resolving conflicts between particular actors. For Nathan Ross, here the state intervenes in the economy to ensure all citizens have access to the benefits of economic progress.³² To this extent, this syllogism is still perfectly valid in our day.

This brief review of the ethical syllogisms has aimed to put in more concrete terms the rather abstract idea of the mutual dependence of the whole and the part that the previous section highlighted as one of the fundamental insights of Hegel's political organicism. The fact that Hegel sees the state and the individual as irreplaceable pieces in the ethical organism should suffice to ward off any suspicion of "overwhelming statism" in the *Rechtsphilosophie*. Due to the nature of the concept itself, neither can exercise the mediation that corresponds to the other.

31 Eril Weil argued that critics of Hegel's defense of the hereditary principle "easily forget that there is no state without individual representation of sovereignty" and that this representative "does not play a very important role, as the president in most of the republics, the king in Great Britain and in other European monarchies of our days, who only formally occupy first place." E. Weil, *Hegel et l'Etat. Cinq conférences* (Paris: Vrin, 1970), pp. 56, 60–61.

32 Ross, *On Mechanism in Hegel's Social and Political Philosophy*, pp. 9, 114.

2.3 The People as an Organized Whole

Hegel's political organicism also includes an organicist conception of the people. He seeks to differentiate his position from "atomistic" conceptions³³ that see the people as a mere aggregate of atomic individualities contingently united by a pact. "Without its monarch and that *articulation* [*Gliederung*] of the whole which is necessarily and immediately associated with monarchy," says Hegel in the *PhR*, "the people is a formless mass. The latter is no longer a state, and none of those determinations which are encountered only in an *internally organized* whole (such as sovereignty, government, courts of law, public authorities, estates, etc.) is applicable to it."³⁴

For Hegel, the separation between the people itself, on the one hand, and the public institutions, on the other, is an abstract operation of thought that only leads to confusion. He regards as absurd the opposition between the sovereignty of the people (understood as a republic or democracy) and the sovereignty of the crown (the monarchy) because it supposes an abstract separation between the people and the state while ignoring the concrete reality of states, where the people and institutions (including the crown) are articulated as an organized whole, as an organism. As we know, Hegel believes that only monarchical sovereignty expresses this reality. If we think of the people "as an internally developed and truly organic totality, its sovereignty will consist in the personality of the whole, which will in turn consist in the reality appropriate to its concept, i.e. the *person of the monarch*,"³⁵ and this happens precisely through the mediation of the singular that the prince exerts. The "*subjectivity* which is certain of itself," the "will's abstract – and to that extent ungrounded – *self-determination*"

33 *PhR*, §273, Anm., p. 265 [311].

34 *Ibid.*, §279, Anm., p. 271 [319]. In the lectures of 1824–1825, Hegel explains that the people as such, as a multitude (*Menge*), is the mass (*Haufen*) and that it "must essentially be a state" and have a government. The "absolute right" of the people is their "absolute duty" to be organized in itself, to constitute a state (*einen Staat auszumachen*). "[T]he people without a state do not deserve respect, they are an inorganic mass." *Rph* 1824–1825, pp. 675–676.

35 *PhR*, §279, Anm., pp. 271–272 [319].

of the “ultimate decision” (*das Letzte der Entscheidung*) in the hands of the monarch, is “the individual aspect of the state as such, and it is in this respect alone that the state itself is *one* [*einer*].”³⁶

Hegel’s rejection of popular sovereignty entails a critique of universal suffrage and even of the possibility of an elective monarchy insofar as both understand “the will in the sense of the *caprice*, opinion, and arbitrariness *of the many*.”³⁷ By “the many” (*die Vielen*) Hegel understands “empirical universality,” something entirely unspecific³⁸ that does not correspond to an organic system in which “the mass [*der Haufen*] attains its interests in a legitimate and orderly manner.”³⁹ Hegel is referring to the legislative assembly and specifically to the estate representation that he defends against democratic representation as we know it today.

In the legislative power, or the “assembly of the estates” (*Ständerversammlung*), representation by estates aims to avoid a split between the power of the crown, as representative of the sovereignty of the state, and the people. The representatives of the estates in the legislative power function as a middle term or “mediating organ” that keeps the government and the different spheres of particular interests in line. Without the estates, the state would split between a sovereign power perceived as arbitrary and a people barely worthy of the name given that it would only be “a crowd [*Menge*] or aggregate [*Haufen*], unorganized in their opinions and volition [*unorganischen Meinungen und Willen*],” who could “become a massive power in opposition to the organic state.”⁴⁰

According to Hegel, citizens achieve “*political significance and function*” (*politische Bedeutung und Wirksamkeit*) in the legislative assembly because they participate in decision-making not as individuals but as representatives of the private estate (*Privatstand*).⁴¹ This estate:

36 *Ibid.*, §279, p. 269 [316–317]. See in this regard: B. Bourgeois, “Le Prince hegelien,” in E. Weil et al, *Hegel et la philosophie du Droit* (Paris: Presses Universitaires de France, 1979), pp. 85–130.

37 *PhR*, §281, Anm., p. 275 [324].

38 *Ibid.*, §301, Anm., p. 289 [339–340].

39 *Ibid.*, §302, Zusatz, p. 472 [343]. Cf. *Rph* 1822–1823, §302, p. 1028.

40 *PhR*, §302, p. 292 [342].

41 In the *Enz.* Hegel explains that the advantage of a share for private persons in public affairs must be located in the right of the “communal spirit” (*der gemeinsame Geist*)

[...] cannot appear either as a simple undifferentiated mass or as a crowd [*Menge*] split up into atomic units. It appears rather as *what it already is*, namely as an *estate* consisting of two distinct parts, the one based on the substantial relation [i.e. the agricultural estate (§203)], and the other on particular needs and the work through which these are mediated [i.e. the formal estate, made up of industrialists and merchants (§204)]. Only in this respect is there a genuine link [*knüpft an*] between the *particular* which has actuality in the state and the universal.⁴²

Note that Hegel speaks here of the “appearing” (*erscheinen*) of the private estate in the legislative assembly. What is represented there must appear as “what it already is” (*was er bereits ist*); that is, representation entails a descriptive element (I tackle this issue in Section 3.4). Hegel understands that civil society is always-already divided into estates according to the different branches of labor, including the universal estate, whose “work for the universal”⁴³ is yet another kind of labor. For this reason, representation in the legislative assembly does not arise from universal suffrage and neither do deputies accede there as individuals but as representatives elected by their respective corporations (in the case of the formal estate) or through lineage (in the case of the substantial estate). The universal estate participates in the legislative sessions as part of the government.

For Hegel, thinking of the people as an assortment of individuals and popular representation in individual terms is an “atomistic and abstract view” that “ceases to apply even within the family, as well as in civil society, where the individual makes his appearance [*zur Erscheinung kommt*] only as a member of a universal.”⁴⁴ Already in the family and in civil society the individual does not *appear* in isolation but always-already linked to

“to make its appearance as an *externally universal* will [*zu der Erscheinung eines äußerlich allgemeinen Willens*] in an orderly and express activity for public concerns.” This satisfaction “breathes new life into communal spirit” and influences the administrative authorities. Individuals must “ascend” (*sich erheben*) from “external” universality to “substantial,” that is, the “*particular kind*” (*besondere Gattung*) or, in social and political terms, the estates. “[I]t is not in the inorganic form of individuals as such (in the *democratic* mode of election), but as organic moments, as estates, that they take up that share.” *Enz.*, III, §544, Anm., pp. 342–343 [243–244].

⁴² *PhR*, §303, p. 293 [343].

⁴³ *Ibid.*, §205, p. 197 [237].

⁴⁴ *Ibid.*, §303, Anm., p. 293 [343–344].

other people by natural or elective bonds. “The freedom of individuals,” says Hegel in the lectures of 1819–1820, “cannot be something individual [*Einzelnes*], but rather presented and represented [*dargestellt und vertreten*] in corporations.”⁴⁵

Representation by estates has the mission of making the people appear not as a “crowd,” “a formless mass” or an “unorganized whole” (*unorganische Gesamtheit*)⁴⁶ but as what it already is, an organization of members, an organism, a state. The state is an organism insofar as the people themselves are organically articulated in families and corporations, that is, the two “ethical roots” of the state,⁴⁷ the two moments that order the “*Desorganisation*” of civil society.⁴⁸

3 A Proposal for Renewal

3.1 What Does “Renewal” Mean?

After languishing for more than a hundred years, having been dismissed as an example of the surrender of critical thought to the existing powers of the day, several attempts were made consider Hegel’s political philosophy anew and determine to what extent it remained valid for the contemporary democratic context. The work of Axel Honneth is emblematic of the interest in reclaiming Hegel’s practical philosophy from a post-metaphysical point of view. In 1992 his *The Struggle for Recognition* set out to carry out a “systematic renewal” of the young Hegel’s theory of recognition. There “renewal” (*Aktualisierung*) meant restricting himself to content that could “be maintained in the conditions of post-metaphysical

45 *Rph* 1819–20 [Anonymous], §120, Anm., p. 329.

46 *PhR*, §303, Anm., p. 293 [344].

47 *Ibid.*, §255, p. 229 [272].

48 *Ibid.*, §255, Anm., p. 229 [273].

thought,"⁴⁹ that is, sustained by the results of empirical psychological, sociological and historical research, regardless of the metaphysical premises of Hegel's philosophy of spirit.

Honneth reappraised his initial disinterest in the mature Hegel in *Suffering from Indeterminacy* and has since continued his program of "Reaktualisierung." This "indirect path" aims to show how the purpose and structure of the *PhR* can be productively reconstructed for the present day without giving an important role to the substantialist concept of the state or to logic.⁵⁰ With his 2011 book, *Freedom's Right*, he definitively establishes his theory of recognition in Hegel's Berlin political philosophy, resolving "to follow the model of Hegel's *Philosophy of Right* and develop the principles of social justice by means of an analysis of society."⁵¹ But to do so he has to abandon theoretical premises such as "the idealistic monism in which Hegel anchored his dialectical concept of Spirit," something that we, "children of a materially enlightened era," can no longer entertain.⁵²

In this last part of the essay I would like to outline a renewed approach to Hegel's political organicism that, like Honneth, takes an indirect path. Inasmuch as Hegel's political organicism contains premises that, while not necessarily metaphysical, are clearly undemocratic, we cannot travel the direct path of a wholesale vindication of his organicist theory of the state. In what follows I am going to return to the three thematic nuclei of organicism I addressed in the first part of this essay and will indicate in each case which ideas of each nucleus I consider apt for rehabilitation today. I will propose examples of contemporary authors who have partially sketched

49 A. Honneth, *Kampf um Anerkennung. Zur moralischen Grammatik sozialer Konflikte. Mit einem neuen Nachwort* (Frankfurt a. M.: Suhrkamp, 1994), p. 7. See also: *ibid.*, pp. 107–108.

50 A. Honneth, *Leiden an Unbestimmtheit. Eine Reaktualisierung der Hegelschen Rechtsphilosophie* (Stuttgart: Reclam, 2001), pp. 12–14. On Honneth's change of position, see: J.-Ph. Deranty, *Beyond Communication. A Critical Study of Axel Honneth's Social Philosophy* (Leiden and Boston: BRILL, 2009), p. 215.

51 A. Honneth, *Das Recht der Freiheit. Grundriß einer demokratischen Sittlichkeit* (Berlin: Suhrkamp, 2011), p. 9 [vii]. English translation (page number in square brackets): A. Honneth, *Freedom's Right. The Social Foundations of Democratic Life*, trans. by J. Ganahl (Cambridge: Polity Press, 2014).

52 *Ibid.*, p. 17 [3].

out this approach. My intention is only indicative and their positions will not be developed in full. These are generally authors inspired by Hegel's work, if not necessarily by his organicism.

3.2 *The Mutual Dependence of the Whole and the Part*

The fundamental insight of the first nucleus, the mutual dependence of the whole and the part, lies in the conception of society as a single body, the old conviction that the human being is a social being.⁵³ In this light the liberal theoretical-political premise, which claims the individual is a self-sufficient entity who defines their values independently with respect to their community, is completely inadmissible. This idea has already been invoked by contemporary communitarianism, which, not coincidentally, has Hegelian roots. The work of Charles Taylor is an example of this, since for him awareness of ourselves as individuals and understanding of our experiences can only take place within the framework of a cultural community. Ethicality refers to the moral obligations that individuals have with respect to the real community to which they belong; for them there is no gap between what ought to be and what is, since established norms and values demand practicable realization.⁵⁴

More recently, Robert Pippin has expressly moved away from a literal interpretation of political organicism, yet that has not prevented him from drawing on certain aspects of it. For Pippin, Hegel's organicism wants to show the dependence of individuals with respect to spirit within the framework of the problem of rationality and freedom. The individual only finds objectivity in the state; the fulfillment of our individual destinies requires participation in rational ethical institutions; practical rationality is always "institution-bound." According to Pippin, Hegel has a theory of freedom

53 On the ancient tradition of political organicism, see: E.-W. Böckenförde, "Organ, Organismus, Organisation, politischer Körper," in O. Brunner, W. Conze and R. Koselleck (eds), *Geschichtliche Grundbegriffe. Historisches Lexikon zur politisch-sozialen Sprache in Deutschland*, Band 4 (Stuttgart: Klett-Cotta, 1978), pp. 561–622.

54 C. Taylor, *Hegel* (Cambridge: Cambridge University Press, 1977), pp. 376–377 and 381.

as rational agency. Practical rationality is a social practice, the interchange of attempts at justification among people within a given community.⁵⁵

The communitarian thesis of political organicism opposes today's prevailing individualism and makes clear how dependent we are on others. We must think of the human individual not just as a self-determined rational agent but also as a vulnerable, precarious being, who needs the integral care of others at each stage of his or her life. This idea can be found in Judith Butler's conception of the "ecstatic" subject, which is always "outside of itself" in a relationship of bodily interdependence and "dispossession" with respect to others, thus giving the lie to "liberal versions of human ontology."⁵⁶

With regard to the organic articulation of powers, modern political theory has insisted on the balances that must exist in a republic so that neither power completely dominates the other. Nowadays, however, not a few political conflicts are immediately transferred to the courts, instead of being settled in parliament or elections, as one might expect. Commonly referred to as the "judicialization of politics," it is often nothing less than the "politicization of justice." The necessary counterbalance of powers descends into mere obstruction. Faced with such scenarios, we would do well to recall the organicist understanding of the division of powers, whereby respect for the popular will ensures harmony between them, for the popular will must find its voice in government and in congress, not in the courts.

Indeed, Honneth reads the *PhR* as critiquing what he sees as the contemporary pathology of legal freedom. He points out the "increasing legal codification [*Verrechtlichung*] of spheres of life that were previously organized in a largely communicative manner," a shift that can be considered an

55 R. B. Pippin, *Hegel's Practical Philosophy. Rational Agency as Ethical Life* (Cambridge: Cambridge University Press, 2008), pp. 249 and 273–274.

56 J. Butler, *Precarious Life. The Powers of Mourning and Violence* (London and New York: Verso, 2004), pp. 24–25. The Hegelian roots of this conception are explicit insofar as for Butler: "The emergent subject of Hegel's *Phenomenology* is an ek-static one, a subject who constantly finds itself outside itself, and whose periodic expropriations do not lead to a return to a former self." J. Butler, *Subjects of Desire. Hegelian Reflections in Twentieth-Century France* (New York: Columbia University Press, 2012), p. xxi.

“‘ideological’ effect of the growing legalism of political discourse.” Honneth does not restrict this tendency to the political realm but finds it in modern life in general. Nevertheless, he expressly refers to “social disputes and conflicts” where “we increasingly adjust the way we act [...] so as to improve our prospects in court.”⁵⁷

Regarding the restrictions of a possible renewal of the first nucleus of political organicism, I would like to point out first of all that the unity of the social body should not be interpreted in terms of cultural uniformity. If the social body is one, unity should not arise from the blurring of cultural differences or from the revival of an essentialist “national identity.” On the contrary, to recognize the living character of a society is to value the cultural diversity that runs through it and enriches it. The unity of the state, then, must be multicultural and even plurinational. Considerations of this sort led to Paul Cobben’s attempt to renew the *PhR* as he identifies as a “weakness of the Hegelian approach” the fact that it “seems to give little space to subjective reflection, historical relativity and multiculturalism.” However, Cobben remains open to a “reformulation” (*Neuformulierung*) of the *PhR* that leaves room for thinking about the dialog between cultures, which is a necessary presupposition of any contemporary multicultural society.⁵⁸

Secondly, invoking the “life of the state” does not sanction any kind of shift of political language toward the biologicist and repressive language of the “social diseases” that need to be “extirpated” from the social body. In fact, this biomedical language is not found in Hegel but in later authors such as Jakob von Uexküll or Karl Binding.⁵⁹ For Hegel, ethical life is not the biological, natural life, but the life of spirit.⁶⁰ Nor does the vitalist language of political organicism imply a biopolitical control of the population in the Foucauldian and Deleuzean sense of a “society of control.” The

57 Honneth, *Das Recht der Freiheit*, pp. 158–164 [87–90].

58 P. Cobben, *Das Gesetz der multikulturellen Gesellschaft. Eine Aktualisierung von “Grundlinien der Philosophie des Rechts”* (Würzburg: Königshausen & Neumann, 2002), pp. 11 and 20.

59 See: J. v. Uexküll, *Staatsbiologie. Anatomie, Physiologie, Pathologie des Staates* (Berlin: Verlag von Gebrüder Paetel, 1920) and K. Binding, *Zum Werden und Leben der Staaten* (München and Leipzig: Verlag von Duncker & Humblot, 1920).

60 See: *WdL*, II, pp. 470–471.

renewal of political organicism would support, however, affirmative forms of biopolitics understood as a politics *of* life and no longer *over* life.⁶¹ Today it is clear that the state must be biopolitical in the sense that it cannot do without an explicit public health policy for the whole population, understood as a unitary subject as much in terms of health as in economics. Perhaps the clearest example of the connection between Hegel's political philosophy and affirmative biopolitics comes from Miguel Vatter, who has located in Hegel's work the origin of "the possibility of an affirmative biopolitics of civil society";⁶² yet he does not grant the state a leading place in that biopolitics nor does he refer to political organicism in particular.

3.3 *The Threefold Syllogistic Mediation of the Ethical Organism*

With regard to the second organicist nucleus, the threefold syllogistic mediation of the ethical organism, in this section I would like to dwell on the syllogism whose middle term is particularity. In Section 2.2 I outlined several ways of understanding the ethical syllogism in today's world: The legitimate intervention of the state in private activity when the mediating term is the universal; and, when the mediating term is the singular, the importance of having strong personal and institutional leaderships to give unity and identity to the state.

The mediation of the particular by civil society appears in the *PhR* as a matter for corporations. Yet the organicist concept of the corporation needs to be brought up to date if we are to identify the kinds of organizations qualified to exercise the mediation of the particular that popular participation requires.⁶³ At present, the mediating role that Hegel attributed to

61 See: Esposito, *Bios*, passim.

62 M. Vatter, *The Republic of the Living. Biopolitics and the Critique of Civil Society* (New York: Fordham University Press, 2014), p. 18.

63 On political participation through corporations, see: *PhR*, §§301–302; *Enz.*, III, §544. A. Buchwalter, "Hegel's Concept of Virtue," *Political Theory*, vol. XX, no. 4 (1992), pp. 548–583; G. Duso, "La libertà politica nella Rechtsphilosophie hegeliana: una traccia," in G. Duso and G. Rametta (eds), *La libertà nella filosofia classica tedesca. Politica e filosofia tra Kant, Fichte, Schelling e Hegel* (Milano: Franco Angeli, 2000), pp. 171–185; J. Terrier, "Pouvoir Législatif, opinion publique et

corporations could be fulfilled by non-governmental organizations such as foundations, churches, scientific societies, professional associations, business chambers, unions, and especially social movements. I'm speaking of private organizations but also, and fundamentally, of the so-called "third sector" and the "non-state, public sphere," which remains equidistant both from the state and the market. The Argentine philosopher Julio De Zan has pointed out that the current rehabilitation of civil society rests on the Hegelian conception of this ethical sphere. According to him, the expression "civil society" should be understood as a collective name for a plurality of groupings united by "*the value of social autonomy and pluralism* that all of them claim and put into action, and for which they have to fight (*Kampf um Anerkennung*) against the advances of the internal colonization of the State and Market systems." In the space of civil society "*social subjects* are built who, in Hegel's expression, are 'the ethical root' of the political meaning of the common good and the State."⁶⁴

3.4 *The Representation of the People as an Organic Whole*

With regard to the last organicist nucleus, the representation of the people as an organic totality, in this section I will not give any Hegelian author as an example but will indicate possible paths to renewal drawing on ideas from contemporary political theory.

One of the most interesting ideas of political organicism is the conception of the people as an organized whole, differentiated "in accordance with the concept." We already know that the determinations of the concept are universality, particularity and singularity, and that, based on this logical differentiation, Hegel classifies the social estates and grants them due political representation in the legislative assembly. This idea is more interesting for its form than for its content. It expresses that what is represented has to

participation politique dans la *Philosophie du Droit* de Hegel," *Revue Française d'Histoire des Idées Politiques*, No. 13 (2001), pp. 57–72.

64 J. De Zan, *La filosofía social y política de Hegel. Trabajo y propiedad en la filosofía práctica* (Buenos Aires: Del Signo, 2009), p. 471.

“appear,” be represented, as what it already is, an organized reality in itself. It does not matter how exactly it is organized, whether society is divided into estates or rather into classes, for example. What is decisive is that political representation grasps the actual organization of civil society and that it does not base representation on social atomization or the contingency of political conjunctures.

The idea of representation by estate and corporation may be placed within a descriptive conception of political representation whereby the representative body corresponds to or resembles what is represented as if it were an undistorted reflection.⁶⁵ Although this classic notion of representation has been widely criticized, descriptive representation has gained ground as a means of grasping the meaning of many social protests over the last few decades. Anne Phillips, for example, has turned to descriptive representation as the basis of a “politics of presence” that includes demands for gender parity in legislatures, for a greater balance between ethnic groups or for the inclusion of marginalized, silenced, or excluded groups.⁶⁶ Although its original conception was quite different, representation in the *PhR* can also be understood as “group representation” and in this sense it could be

65 See: H. F. Pitkin, *The Concept of Representation* (Berkeley, Los Angeles and London: University of California Press, 1972), p. 60. It should be noted that Hegel has a complex conception of representation, which is not entirely descriptive because in the *PhR* he makes it clear that it is only with the publicity of the deliberations of the legislative assembly that public opinion has access to “true thoughts and insight with regard to the condition and concept of the state and its affairs.” *PhR*, §315, p. 301 [352]. Thus, the representative “creates” in some way what is represented through their speeches; they do not simply reflect it. This is close to a performative conception of representation. See in this regard my paper: E. Assalone, “La esfera pública en los *Principios de la Filosofía del Derecho* de Hegel. Tensiones y mediaciones en la vida ética moderna,” *Eidos*, N° 29 (2018), pp. 15–39.

66 A. Phillips, *The Politics of Presence* (Oxford: Clarendon Press, 1998), p. 5. It is interesting to note that Phillips supports the equality or proportionality of presence in Charles Taylor’s “politics of recognition,” whose Hegelian overtones are clear from this redefinition of descriptive representation. “The required recognition,” says Phillips, “has been widely interpreted as including a more public presence in political life: a public acknowledgement or equal value.” *Ibid.*, p. 40.

redeployed as a tool for affirmative action in favor of oppressed or disadvantaged social groups.⁶⁷

If, as I just indicated, we focus on the form and not on the content, we will see that reviving the type of representation defended by Hegel is perfectly feasible. We can, for example, multiply the quotas and think not only about the representation of women but also of ethnic minorities, trans people, specific age groups, etc. Of course, prior discussion of the metaphysical premises of Hegel's logic is required if the division is to be "in accordance with the concept." In the meantime, however, the necessary character of the division it implies could be reappropriated.

Popular representation of minorities cannot depend on the ups and downs of public opinion, whose contingencies put inalienable rights at risk. Affirmative action measures such as gender parity can redress power imbalances to the benefit of all, even when they check the power of the majority.

This brings us to the content of Hegel's conception of representation, which is undoubtedly the most debatable aspect of his political organicism. His criticisms of universal suffrage are too far removed from the current context for reconsideration because they question the core of our democratic sensibilities. Likewise, the elitist elements undergirding the division of society into estates are incompatible with a democratic regime. Although one may still legitimately argue that the Congress represents the people as what it already is, this cannot mean that the state validates *de facto* inequalities. Hence the need to renew estate representation in terms of descriptive representation, group representation and politics of presence, which would allow us to combat inequalities of gender, class, race or age instead of legitimizing them.

4 Conclusion

Two hundred years after its publication, Hegel's *PhR* remains valuable. Indeed, the political organicism it espouses could prove effective as long

67 See: I. M. Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," *Ethics*, no. 99 (1989), pp. 250–274.

as it is revised and reimagined for a democratic society. The mutual dependence between the whole and the part, the holistic ontological thesis of organicism, can help us think about the unity of the communal “us” and the interdependence that links us bodily and affectively to those with whom we live. But, if an organic totality assumes that there is life in each part of the organism, the value of the part must also be emphasized. This leads to the organicist thesis of the threefold syllogistic mediation of the state, which gives us a way to reflect on and process difference, for the political organism is a differentiated unity, not a uniformity blind to difference. The particular and the singular have to assume a leading role; they have to exercise some kind of ethical mediation. However, complying with the mediation exercised by the particular means guaranteeing effective popular participation through appropriate political representation. Then the question becomes how to represent that unity in difference, how the people should participate *in* the state and *as* a state, how what is should appear as it *already* is: one and differentiated at the same time. It comes down to how civil society can participate in the state. Hence the third organicist thesis, the conception of the people as an organized whole: What is represented is something organic, differentiated according to the concept; representation must describe that rational reality, a reality that is not atomized but organized into social groups.

The insight that inspires political organicism is borne out by the context in which these arguments are being put forth. The current pandemic reveals, in a bodily dimension that is difficult to ignore, the level of interdependence that always unites us as essentially social beings. It has made clear, for example, that taking care of oneself is taking care of the other, and vice versa. Today, as few times before in our history, we have a direct experience of an argument made in political and social philosophy since ancient times: We are not social atoms; the communities we live and die in are not a mere aggregate of parts or the result of arbitrary conventions but, literally, living organisms, living wholes that have even a greater degree of autonomy with respect to the individuals who live in them.

This pandemic, whose future remains uncertain, has placed objective limits on individualism and vindicated the key role of the nation-state in finding a way out of these twin crises in health and the economy. The

pandemic has revealed the importance of having a national position in order to face this type of biological threat since without a strong state, without integrated and solid health systems, without public investment in scientific and technological development, and without centralized economic and public health policies, citizens are defenseless against the disease. Only the wealthiest, the youngest, and the healthiest stand a chance, thus validating inequality and undermining the normative pillars of society. It is in this context that the need for more comprehensive concepts regarding the biopolitical role of the state becomes ever more urgent.

5 Abbreviations

<i>PhR</i>	<i>Grundlinien der Philosophie des Rechts</i> , 1821.
<i>Werke</i>	<i>Hegel, G.W.F. Werke (in 20 Bände)</i> , Suhrkamp Verlag.
<i>Rph</i> 1817–1818	<i>Vorlesungen über die Philosophie des Rechts</i> , Heidelberg, 1817–1818, Wannenmann's manuscript.
<i>Rph</i> 1818–1819	<i>Vorlesungen über die Philosophie des Rechts</i> , Berlin, 1818–1819, Homeyer's manuscript.
<i>Rph</i> 1819–1820 [Anonymous]	<i>Philosophie des Rechts. Die Vorlesung von 1819/20 in einer Nachschrift</i> , Berlin, 1819–1820, anonymous manuscript.
<i>Rph</i> 1819–1820 [Ringier]	<i>Vorlesungen über die Philosophie des Rechts</i> , Berlin 1819–1820, Ringier's manuscript.

<i>Rph</i> 1822–1823	<i>Vorlesungen über die Philosophie des Rechts</i> , Berlin, 1822–1823, Hotho's manuscript.
<i>Rph</i> 1824–1825	<i>Vorlesungen über Rechtsphilosophie</i> , Berlin, 1824–1825, Griesheim's manuscript.
<i>Enz.</i>	<i>Enzyklopädie der philosophischen Wissenschaften im Grundrisse</i> , 1830.
<i>Enz.</i> , I	<i>Enz.</i> , Erster Teil. Die Wissenschaft der Logik.
<i>Enz.</i> , II	<i>Enz.</i> , Zweiter Teil. Die Naturphilosophie.
<i>Enz.</i> , III	<i>Enz.</i> , Dritter Teil. Die Philosophie des Geistes.
<i>WdL</i>	<i>Wissenschaft der Logik</i> , 1832.
<i>WdL</i> , II	<i>Wissenschaft der Logik</i> , Vol. II.

5 Hegel and the *Philosophy of Right*

The Role of “Mediation” and the Overcoming of the *Homo uti Singulus* Conception

*Che colui che lascia quello che si fa per quello che si dovrebbe fare impara piuttosto la ruina che la perservazione sua.*¹

– N. Machiavelli, *Il Principe*.

1 Beyond Marx’s Judgment: The Owl as Realist Image

The judgment on Hegel’s philosophy expressed by Karl Marx in the work *Zur Kritik der Hegelschen Rechtsphilosophie* is well-known:² Hegel

1 “Whoever forsakes what is done for what ought to be done is learning self-destruction, not self-preservation.” N. Machiavelli, *The Prince*, translated by J. B. Atkinson (Indianapolis/Cambridge: Hackett Publishing Company, Inc., 2008), pp. 255–257.

2 Just to give some bibliographical references: S. Hook, *From Hegel to Marx: Studies in the Intellectual Development of Karl Marx* (Ann Arbor: The University of Michigan Press, 1962), see in particular chapter 3: “The Dialectical Method in Hegel and Marx”; D. Leopold, *The Young Karl Marx* (Cambridge: Cambridge University Press, 2007); A. Chrysis, “True Democracy” as a Prelude to Communism: *The Marx of Democracy* (Cham: Palgrave MacMillan, 2018); G. Della Volpe, *Logica come Scienza Positiva* (Messina: D’Anna, 1950); L. Colletti, *Il Marxismo e Hegel* (Bari: Laterza, 1969); J. Hyppolite, *Études sur Marx et Hegel* (Paris: Édition Marcel Rivière et Cie, 1965), see in particular chapter 6: «La Conception Hégélienne de l’État et sa Critique par Karl Marx»; L. Althusser, *Pour Marx* (Paris: La Découverte/Poche, 2005); J. Hirsch, J. Kannankulam and J. Wissel, *Der Staat der Bürgerlichen Gesellschaft. Zum Staatsverständnis von Karl Marx* (Baden-Baden: Nomos,

misdescribes empirical reality “as an embodiment of rationality and freedom.”³ Presenting the *rational* as *real* and the *real* as *rational*, the Stuttgart philosopher’s thought, under the mystification of the Idea, takes the shape of mysticism [*der logische, pantheistische Mysticismus*];⁴ “Reality [*Wirklichkeit*] is not expressed as itself but as another reality.”⁵ What is the other reality? The Idea that splits itself into political spheres. What is the true reality? The reality that Hegel mystifies as Spirit: the Prussian State.

The merits attributed by the young Marx to Hegel’s philosophy are equally well-known: It “always begins with and accentuates the antithetical [*Gegensatz*] character of the determinate elements”;⁶ it also recognizes the separation [*Trennung*] of modern bourgeois society between *civil society* (social sphere) and *State* (political sphere).

However, clearly influenced by Feuerbach’s thought⁷ and placing a tombstone on the topic, Marx insisted on the abstraction of the dialectical system and the illusion of overcoming the separation between civil society and State using the medium of intermediate bodies (mediations). This two main defects of Hegelian political philosophy were enough to nullify all its merits.

2008); E. Bader, *Staat und Religion bei Karl Marx. Absterben oder Veränderung?* (Hamburg: Verlag Dr. Kovač, 2009).

3 Leopold, *The Young Marx*, p. 58.

4 K. Marx, F. Engels, *Gesamtausgabe* (MEGA), vol. 2 (Berlin: Dietz Verlag, 1982), p. 8.

5 *Ibid.*

6 *Ibid.*, p. 58.

7 “[Marx] early writings are full of references to the best-known of Feuerbach’s middle-period texts; *Das Wesen des Christentums*, *Das Wesen des Glaubens im Sinne Luthers*, the ‘Vorläufige Thesen’, and the *Grundsätze* are all regularly mentioned. Marx was also acquainted with some of Feuerbach’s less well-known writings from this period, including his 1840 review of Karl Bayer’s book on ‘ethical spirit.’ Nor does this exhaust the young Marx’s knowledge of the Feuerbach corpus. He had also read some of the earlier writings. For example, in preparing his doctoral thesis, Marx had made use of Feuerbach’s *Geschichte der neuern Philosophie von Bacon von Verulam bis Benedikt Spinoza*.” See Leopold, *The Young Marx*, p. 218. See also: G. Bedeschi, *Introduzione a Marx* (Roma-Bari: Laterza, 2008), p. 6. Bedeschi highlights above all the influence that the work *Vorläufige Thesen zur Reform der Philosophie* (1842) exerted on the young Marx.

The thought of an evident hermeneutic infertility in the Hegelian idealistic method, imprisoned within the rationality of the System, turns out to be virtually impervious to scratches. A bit like Hamlet's ghost, Marx's judgment continued to hover, and the reference to Hegelian political philosophy as an abstract one, unable to change the world but only to "interpret" it, appears "as the air, invulnerable."⁸ Exactly the reference to Shakespeare, together with the desire to give an account of the *Wirklichkeit* weight in Hegel, prompted Remo Bodei to use the metaphor of the "mole," coined in Hamlet⁹ and reported – among the others – also by Marx in *Der achtzehnte Brumaire des Louis Bonaparte*. In Bodei's opinion there is in Hegel the fully realistic attempt to combine both French materialism and German subjective idealism. Metaphorically, and in the same philosophical formula, he wants to combine the *mole* and the *owl*: "Owl and mole are complementary images, a pair of opposite mirrors that presuppose each other in the antagonism between visual acuity and blindness, observation and instinctive action."¹⁰ The mole has indeed the fundamental function of producing the so-called "underground work." Digging and blind perforation gives rise to the contradiction and, consequently, historical development takes place. As a matter of fact, in Hegel's vision progress is more likely the result of an unconscious, instinctual, non-reflex process of reason, than of philosophical consciousness. Compared to the mole, this brings the owl back to a perfectly complementary role. Consciousness becomes the accelerator of the mole's work – it abridges the birth pangs of the new world. The role of philosophical conscience, the owl that spreads its wings at dusk, is in this sense not the simple interpretation of the world but the premise for its change: "Consciousness therefore helps to take possession of the world."¹¹

Given the above, the purpose that inspires this chapter, according to the interpretation which sees in Hegelian political philosophy anything but abstract and mystifying, is to show some elements of his realism.

8 W. Shakespeare, *Hamlet*, act I, scene I, The Cambridge Dover Wilson Shakespeare, vol. 7 (Cambridge: Cambridge University Press, 2009), p. 8.

9 "Well said, old mole! canst work i'th'earth so fast?" *Ibid.*, act I, scene V, p. 32.

10 R. Bodei, *La civetta e la talpa. Sistema ed epoca in Hegel* (Bologna: il Mulino, 2015), pp. 64–65.

11 *Ibid.*, p. 65.

By examining certain paragraphs of the *Grundlinien der Philosophie des Rechts* I would like to emphasize two aspects: (1) the importance attributed by Hegel to *Ethical life* [*Sittlichkeit*] as an overcoming of the *homo uti singulus* conception; (2) the essential role of “mediations” in order to bring the parts back into the whole (the universal), going beyond the modern contractualist and liberal theory which supports (in Hegel’s thought) an atomistic and individualistic conception of society. It refers to closely intertwined themes, which Hegel matures since his first systematic political writing, *Die Verfassung Deutschlands*, and that, in my view, not only express a strong political realism but, *mutatis mutandis*, can also be helpful for a critical approach on our time whose “liquid” character, instead of realism, seems to have produced in some ways the dystopian effect of what, using an expression by Bauman inspired by Kundera, could be called “The seductive lightness of being.”¹²

2 In Praise of Machiavelli: *De Principatibus* and the Pyramid as Emblem of Political Realism

“Germany is no longer a state”¹³ [*Deutschland ist kein Staat mehr*] are the introductory words chosen by Hegel to open his manuscript *Die Verfassung Deutschlands*, completed, according to Harris, in 1802, and presumably started immediately after the end of the Rastatt congress.¹⁴ It

12 Z. Bauman, *Liquid Modernity* (Cambridge: Polity Press, 2006), p.118.

13 G. W. F. Hegel, *Werke*, vol. 1 (Frankfurt am Main: Suhrkamp Verlag, 1986), p. 461. For an English translation of Hegel’s political work: G. W. F. Hegel, *Political Writings*, tran. by H. B. Nisbet (Cambridge: Cambridge University Press, 1999); see also G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. by H. B. Nisbet (Cambridge: Cambridge University Press, 1991).

14 Referring to the first draft of the Manuscript Introduction, Harris writes: “The dating is much less conjectural than that of ‘The Spirit of Christianity’ drafts because of the references to the Congress of Rastatt. [...] My own guess is that the fragment was written in Dec. 1798 and/or Jan. 1799 before Hegel began to study Steuart.” See H. S. Harris, *Hegel’s Development: Toward the Sunlight*

can be seen both from the lucid analysis of the present and from the solution that Hegel proposes that the work in question is permeated by a profound realism. The sentence is without appeal: "Germany is no longer a state." It is no longer a state because it has shown all its weakness in the war against the French. Divided into many political units, torn apart by the private interest of the various princes, under the aegis of an empire at the twilight of its existence, Germany was no longer a state but a multitude of men unable to defend their borders and grasp the unity of the whole.

A mass of people can call itself a state only if it is united for the common defence of the totality of its property. Although this is in fact self-evident, it should nevertheless be pointed out that this union should not only have the intention of defending itself, but actually does defend itself by force of arms, whatever power and success it may have.¹⁵

The sharp way in which Hegel portrays the fall of Germany is nothing more than the first step in the cure. The diagnosis is serious because the disease is serious as well: "gangrenous limbs cannot be cured by lavender-water [*Lavendelwasser*]."¹⁶ It is precisely with this medical operation in mind that Hegel finds the ointment for Germany in Machiavelli's *De Principatibus*. Although the Italian thinker was traditionally considered the founder of an autonomous political science free from religion and morality,¹⁷ and despite it was often prone to unflattering equations that

1770–1801 (Oxford: Oxford University Press, 1972), p. 436. The dating (1806–1808) reported by the German philosopher Karl Rosenkranz must be pointed out as erroneous. See K. Rosenkranz, *Georg Wilhelm Friedrich Hegel Leben* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1963), p. 235.

15 Hegel, *Werke*, vol. 1, pp. 472–473.

16 *Ibid.*, p. 80.

17 Among the authors certainly most averse to Machiavelli's position we find Immanuel Kant. In the philosophical project *Perpetual Peace*, he writes: "Hence there can be no conflict between politics, as an applied branch of right, and morality, as a theoretical branch of right (i.e., between theory and practice)." I. Kant, *Politische Schriften* (Wiesbaden: Springer Fachmedien Wiesbaden GmbH, 1965), p. 133. See also M. Castillo, "Moral und Politik: Mißhelligkeit und Einhelligkeit," in O. Höffe (ed.), *Zum ewigen Frieden* (Berlin: Akademie Verlag, 2004), pp. 195–220. For an English translation of Kant's political work: I. Kant, *Political Writings*, trans. by H. B. Nisbet (Cambridge: Cambridge University Press, 1991).

saw in his prescriptions *immorality* in the service of tyrants, Hegel seems to be inclined toward another, opposite interpretation. Indeed, according to the philosopher from Stuttgart, Machiavelli is not so much the destroyer of morality as such, but rather the critic of a precise kind of it: the *traditional* one. It is precisely this *common morality*, individualistic and abstract, which stops itself at the single individual and does not consider his relations with society, that is fought by Machiavelli.¹⁸ Hegel highlights the close analogy between Machiavelli's Italy and his Germany.

Thus France, as well as England, Spain, and the other European countries, succeeded in pacifying and uniting those elements which fermented within them and threatened to destroy the state. [...] Conversely, the fate of Italy has run the same course as that of Germany, except that Italy, since it had already attained a greater degree of culture, brought its fate sooner to that level of development which Germany is now approaching in full. [...] In Italy, every point of the country acquired sovereignty. It ceased to be one state and became a host of independent states – monarchies, aristocracies, democracies, just as chance dictated; and the degeneration of these constitutions into tyranny, oligarchy, and ochlocracy even made its appearance for a time.¹⁹

That kind of situation, which saw the Italian fragmentation exposed to the armed force of the unitary states, could only foresee, in order to be resolved, the political solution envisaged by Machiavelli. He was therefore not the author of an immoral political thought, but of an ethics of the state as *raison d'État*, which realistically, before looking at reality as it should be, looked at it in its actual, concrete truth, proposing the virtue of the prince as the faculty to keep the *res publica*.²⁰ Thus the great merit of Machiavelli is to have conceived the unification of Italy as the only solution to escape the drama of the invasions and the raids caused by the endemic weakness of the small states, often – in their turn – fighting each other. Since Germany was in the same way as Renaissance Italy, it follows

18 G. Bedeschi, *Hegel* (Roma-Bari: Laterza, 1993), p. 6.

19 Hegel, *Werke*, vol. 1, pp. 550–551.

20 According to Skinner, Machiavelli uses a “new morality” in prescribing the princely virtues. Therefore, he does not reject morality *in toto*, he simply rejects “conventional humanist morality.” See Q. Skinner, *Machiavelli* (New York: Hill and Wang, 1981), p. 46. See also M. Viroli, *Machiavelli* (Oxford: Oxford University Press, 1998), pp. 50–56.

for Hegel that the solution proposed by Machiavelli for his country had to also apply to the now fallen Holy Roman Germanic Empire. If Machiavelli invoked Lorenzo di Piero de' Medici to unite Italy,²¹ in the same way Hegel refers to generic Theseus for Germany unification. It is difficult not to notice in the Hegelian pages that make up the work *Die Verfassung Deutschlands*, the deep wound by the victory of the French revolutionary army against the Reich, notably in Marengo and Hohenlinden. Peace of Lunéville and Rhine left bank cession to France represented a serious humiliation in the German national consciousness.²² Only a work of profound political realism could change the country's fate.

For the purpose of this chapter, it seems to me significant to highlight an image used by Hegel himself, which has the merit of clarifying the relationship between the *whole* and the *parts* in his political philosophy. Referring to German statelets, he compares their disintegrating and solipsistic function to the one of perfectly round stones that want to constitute a pyramid.

Such associations are like a heap of round stones [*Haufen runder Steine*] which combine to form a pyramid. But since they are completely round and must remain so without interlocking, as soon as the pyramid begins to approach the end for which it was constructed, they roll apart, or at least offer no resistance [to such movement].²³

The concept of State as unity of *universality* and *particularity* and as Being of Spirit (concrete Rationality), to paraphrase what Hegel will report in *Grundlinien der Philosophie des Rechts*,²⁴ is now represented through the figure of the pyramid. So that it can be solid and stand on itself, it is needed that each stone in the pyramid is perfectly identified with the whole. Hegel's organicism has a realistic basis: The whole is greater than the sum of the individual parts. The whole (the State) not only precedes its constituent parts – which is the reason why both the theory advocated by *contractarianism* and *liberalism* is unsubstantiated²⁵ –, but it is

21 See Machiavelli, *The Prince*, p. 383.

22 Bedeschi, *Hegel*, p. 9.

23 Hegel, *Werke*, vol. 1, p. 504.

24 G. W. F. Hegel, *Werke*, vol. 7 (Frankfurt am Main: Suhrkamp Verlag, 1986), p. 399.

25 Smith write: "Hegel's objection to empirical theories of natural right turns not so much on their conclusions as on the method by which they purport to arrive at

also superior to them. It follows that, making their private interest prevail over the public, German statelets mistake freedom for individualism. They believe they are preserving their autonomy but at the first serious threat coming from an accomplished nation-state army, their abstractness results in ruin. In fact, even individualistic morality, instead of identifying the parts with the whole, ends up separating them from the universal.

Regarding the theme of the relationship between the *whole* and the *parts*, as well as the need to found an organic ethics, able to go beyond private relationships between individuals, is of great interest another Hegelian political writing: *Beurteilung der Verhandlungen in der Versammlung der Landstände des Königreichs Württemberg im Jahr 1815 und 1816* [*The Assessment of the Published Negotiations of the Assembly of Estates in the Kingdom of Württemberg in 1815 and 1816*]. It is a long comment that Hegel published in the *Heidelberger Jahrbücher* in 1817. The political focus under consideration concerns the clash between Friedrich, ruler of the kingdom of Württemberg, and the *Reichstag*. The facts date back to the two-year period 1815–1816: The king's decision to give his kingdom a more modern constitution was opposed by the parliamentarians' conservatism, who rejected the royal constitution and asked for the re-establishment of "ancient law."²⁶ Hegel sides with the reforming sovereign, and yet he spares no criticism of the model proposed, in the opinion of the Stuttgart philosopher, too liberal, atomistic, and disjointed. An obvious example that leads us to understand Hegel's thought is represented by that section of the essay which analyzes the representative ordering. Regarding the *active electorate*, Hegel criticizes the king's decision to grant this right to anyone who had reached the age of 25 and had been in possession of an income

them. Empirical theorists like Hobbes and Locke claim to discover the most universal features of human beings by means of a kind of thought experiment, hypothetically stripping or peeling away everything man has acquired through the influences of history, custom, and tradition, in order to discover the state of nature and the natural man behind them." See S. B. Smith, *Hegel's Critique of Liberalism* (Chicago: The University of Chicago Press, 1989), p. 67. See also A. Patten, *Hegel's Idea of Freedom* (Oxford: Oxford University Press, 1999), in particular chapter 4: "Hegel and Social Contract Theory."

26 Bedeschi, *Hegel*, p. 25.

from real estate of two hundred florins. "What immediately strikes the eye – he states – is that on the basis of such arid and abstract rules [*solchen trockenen, abstrakten Bestimmungen*], the voters appear without any connection or relationship both with the civil order and with the organization of the state as a whole. The citizens present themselves as isolated atoms, the electoral assemblies as disordered and inorganic aggregates, and the people as dissolved in a multitude."²⁷ Age and income, in fact, are qualities that concern the individual in his isolation, not properties that constitute his weight in the social order. They say nothing about the individual, nothing that is relevant to politics.

In Hegel's political vision, the *res publica* should be a spiritual order in which the political subject is the bearer of a social status. What matters is the position held by the individual in civil society, his profession, the interest and the group he wants to represent. Only in this way can the organic union of *civil society* and *State* (*private* and *public*) be achieved. The idea of granting voting rights to a large number of people, based on minimum requirements, not only ends up nullifying the political effect of representation – because too many voters and too many elected end up making everyone's function insignificant – but also giving the illusion that greater freedom produces nothing but a state of affairs more in accord with the "anarchist principle" [*anarchischen Prinzip*] of isolation.²⁸ Once again there emerges the concept of the superiority of the *whole* over the *parts*, hence the need to develop an ethics that goes beyond the individual as a perfectly round stone. The excess of democracy, anarchy, social atomism are the negation of organic unity. The State is Living Rationality, the owl called to correct and direct those which, otherwise, would be the simple volatile moods of moles.

It may still be remembered that the exercise of such an isolated profession, like that of the voter, easily loses interest in a short time and generally depends on a casual disposition and a momentary preference [*augenblicklichem Belieben*].²⁹

27 G. W. F. Hegel, *Werke*, vol. 4 (Frankfurt am Main: Suhrkamp Verlag, 1986), p. 482.

28 *Ibid.*

29 *Ibid.*, pp. 483–484.

How, then, does one overcome the abstraction of number and patrimony, to constitute an ethical unity in which the *parts* are in function of the *whole*? This is the great question that arises when it is decided to go beyond individualistic morality to embrace the organicist ethics of the State. Hegel's answer is without fear of contradiction: by realizing an organic formation [*organische Bildung*], an articulated totality, whose parts form, in turn, particular spheres arranged in a hierarchical order.³⁰ Organic unity guarantees the union of the *parts* with the *whole*, constituting a pyramid, this time, of angular stones. Precisely these two concepts of political realism, *ethical life* [*Sittlichkeit*] and *mediation* [*vermittelndes*], constitute the pivotal points of the philosophy of right expressed in *Grundlinien der Philosophie des Rechts*.

3 *Sittlichkeit*: Against the Fortuity of Kantian Morality

In the second section of the third part of *Grundlinien der Philosophie des Rechts*, dedicated to *civil society* [*Die bürgerliche Gesellschaft*], Hegel defines civil society as the moment of *Sittlichkeit* loss.³¹ In fact, it is well-known that in Hegelian philosophy nothing is lost, but in the *Aufhebung* process what seems to deny itself is at the same time maintained and elevated. However, while playing a fundamental role in achieving *ethical life*, civil society is also the sphere of splitting. If compared to the family, the individual is nestled in an antithetical sphere. There he could count on a form of immediate and unreflective *ethical life*, based on blood; here he finds himself alone, having to compete for his own needs. Civil society doubles the individual: He is at the same time a concrete singularity [*konkrete Person*] endowed with free will, and subject who, in order to realize himself, must necessarily enter into a relationship [*Beziehung*] with others. In the triadic process of dialectics, civil society plays the role of negation, which is realized by social atomism. Freedom is not fully

³⁰ *Ibid.*, p. 483.

³¹ Hegel, *Werke*, vol. 7, p. 340.

expressed and the particular is raised to the universal (reuniting with the whole) only thanks to *necessity* [*Notwendigkeit*].³²

It could be said that what has just been described for *civil society* also happens in the highest triad of Objective Spirit. *Morality*, in fact, as a negation of *abstract law* [*abstrakte Recht*], represents in turn a loss. In particular, it represents the loss of interdependence and subjective recognition that is accomplished in *abstract law* – albeit in a contingent form – in favor of a subjective will.

The problem with the moral point of view is that it is incomplete. [...] Of course, we may well be mistaken on what we choose (see PR, §140R). When we consider our subjective will, we consider ourselves in isolation from society. We may intend good, but our only guide is our individual conception of the good. (see PR, §140A)

Therefore, for Hegel, morality is in danger as an “abstract universality ... without content” (PR, §135). We overcome this worry by moving from the moral point of view and subjective standpoint towards “ethical actuality” within a more objective standpoint. (see PR, §153)³³

32. About *civil society* in Hegel's thought, *inter alia*, see: K. Lichtblau, *Theorie der bürgerlichen Gesellschaft. Zum Verhältnis von Ökonomie, Recht und Politik* (Giessen: Focus-Verlag, 1978); D. Wolf, *Hegels Theorie der bürgerlichen Gesellschaft. Eine materialistische Kritik* (Hamburg: VSA Verlag, 1980); Z. A. Pelczynski (ed.), *The State and Civil Society: Studies in Hegel's Political Philosophy* (Cambridge: Cambridge University Press, 1984); J.-F. Kervégan, *The Actual and the Rational: Hegel and Objective Spirit* (Chicago: The University of Chicago Press, 2018), in particular Part 2: *The Vitality and Flaws of the Social*.

33. T. Brooks, *Hegel's Political Philosophy: A Systematic Reading of the Philosophy of Right* (Edinburgh: Edinburgh University Press, 2007), p. 54. For the sake of completeness, Brooks writes: “Hegel's views on morality have attracted much controversy, particularly with regards to his criticisms of Kant's moral theory. Famously, Hegel accused Kantian morality of being overly formalistic and lacking in content. [...] I agree with Kant's defenders that Hegel's criticisms are at best uncharitable. Hegel redefines ‘morality’ and then he uses this new redefinition as a vantage point to criticize the views of others. [...] Nevertheless, Kant's project centers on the derivation of universal moral principles which we should all honour. Hegel's primary criticism is that his understanding of what constitutes such principles cannot perform the work that Kant wants them to achieve.” Brooks's thesis is that “Kant's moral theory is not completely rejected by Hegel's *Philosophy of Right*, but reincorporated in Hegel's discussion of religion and the state.” *Ibid.* pp. 52–61. See also

In order to make clearer what has been written so far, it may be useful to recall Hegel's criticism of the Kantian plan for "perpetual peace." In §333 Hegel translates the Kantian attempt to achieve a peaceful federation of states through concord [*Einstimmung*] as "tainted with contingency."³⁴ The same interpretation is applied by Hegel in the section dedicated to *morality*. *Morality*, in short, is abstract. Its commandments, as fact of reason [*Faktum der Vernunft*], are *private* and they cannot concern the *public* sphere of *Sittlichkeit*.

Certainly, this is not the place to determine whether Kant or Hegel is right; admitted it is possible. As Brooks points out: "Kant's defenders have argued that Hegel's criticisms fall wide of the mark, while Hegel's admirers, such as F. H. Bradley, claim his criticisms 'annihilated' Kant's theory. Both sides offer a compelling picture and the debate between the two is seemingly intractable, with neither side willing to concede much ground."³⁵ Regardless of wrongs and reasons, what I think is relevant is to show how at the base of Hegel's choice to overcome *morality* there is a profound evidence of concreteness and political realism. "Good life" is not achieved in individuals' private consciences, just as peace is not achieved by relying on the good disposition of States. It is necessary that an ethical system be capable of unifying the self-awareness of individuals with the *laws* and the *institutions* of the State into a totality that is no longer separate. The "living form of the good life," which coincides with real Freedom, is realized in the organic unity of "objective institutions" and "subjective disposition."³⁶

F. H. Bradley, *Ethical Studies* (Cambridge: Cambridge University Press, 2012), in particular Essay 6: "Ideal Morality."

34 Hegel, *Werke*, vol. 7, p. 500. It should be noted that Kant's confidence in the realization of a perpetual peace between States was not based only on the *second definitive article* of his philosophical project, but rather on the great role played by international trade and commerce. About this aspect see: P. J. Kain, "Hegel's Political Theory and Philosophy of History," *Clio*, vol. 17 (1988), p. 346.

35 Brooks, *Hegel's Political Philosophy*, p. 52.

36 J. D. Goldstein, *Hegel's Idea of the Good Life. From Virtue to Freedom, Early Writings and Mature Political Philosophy* (Dordrecht: Springer, 2006) p. 147. See also M. B. Foster, *The Political Philosophies of Plato and Hegel* (New York: Russell & Russell, 1965), in particular chapter 4: "Law as the Condition of Freedom in the State."

The matrix of Hegelian political realism can be found in a discovery: the modern separation of *civil* and *political* society. Hegel is the first political thinker capable of grasping this dramatic aspect. Quoting Hardimon: "Philosophers before Hegel, from Aristotle to Kant, including Locke, used the term 'civil society' and its cognates (*koinonia politike*, *societas civilis*) interchangeably with 'political society.' For them, civil society was political society. In distinguishing civil from political society, Hegel recognized the emergence of a new social configuration: a separate, private social sphere, within which agents lived for themselves, without participating in political affairs."³⁷ The political acumen of this discovery, recognized by Marx himself, sets the Stuttgart philosopher apart from his predecessors. It can be defined as a real turning point, certainly dictated by his time, that time that Philosophy "grasps its time in thoughts" [*ihre Zeit in Gedanken erfaßt*].

Ever-growing consciousness of the modern individual split into *citizen* and *bourgeois* enables Hegel to give a different answer, capable of going beyond an abstract reconciliation in *morality*. He finds one in *Sittlichkeit*: "Ethical life is the *Idea of Freedom* [...], the *concept of freedom* [*Begriff der Freiheit*] which has become the existing world and the nature of self-consciousness."³⁸ It represents Freedom's synthesis sphere: The moment in which the Concept of the will, the Good, coincides with its *existence* in particular wills. The individual is no longer conceived *uti singulus*, but his existence is brought back within the "ethical powers" [*sittlichen Mächte*] (family, civil society, state), which he perceives as his own essence. The fortuitous character of *morality* is overcome in institutions and laws as the real contents of *ethical life*. The subject, in the limitation of duty, finds his own liberation.

On the one hand, he is liberated from his dependence on mere natural drives, and from the burden he labours under as a particular subject in his moral reflections on obligation and desire; and on the other hand, he is liberated from that indeterminate subjectivity which does not attain existence or the objective determinacy of action,

37 M. O. Hardimon, *Hegel's Social Philosophy: The Project of Reconciliation* (Cambridge: Cambridge University Press, 1994), p. 187.

38 Hegel, *Werke*, vol. 7, p. 292.

but remains *within itself* and has no actuality. In duty, the individual liberates himself so as to attain substantial freedom.³⁹

4 From the *Oppositions* of Extremes to the *Mediations* of Organic Totality

One might ask, at this point, how Hegel intends to concretely realize his political realism. How do the parts manage to overcome the singularity and recognize themselves in the whole? The answer comes from the *mediation* bodies. Hegel writes: "It is one of the most important insights of logic that a specific moment which, when it stands in opposition, has the position of an extreme, loses this quality and becomes an *organic* moment by being simultaneously a *mean*."⁴⁰ People and government, for instance, are two extremes. However, in Hegel's organicist conception, both spheres lose their particularism (and their opposition as polar subjects) thanks to the *estates*: "It is a common but highly dangerous prejudice to represent the Estates chiefly from the point of view of their opposition to the government, as if this were their essential position. It is only through their mediating function that the estates display their organic quality, i.e. their incorporation in the totality."⁴¹ The estates' mediation is fundamental, since they ensure that on the one hand the government does not become a private, particularistic, arbitrary fact, and on the other hand they allow the individual not to get lost in a blind, disorganized multitude [*Haufens*]. Estates, in summary, organize the State body according to the *status* of its members, based on the interests they hold. In this way the parts are no longer isolated atoms which mislay visibility in the disintegration, until they disappear, but through the mediation of the estates, they find their link with the whole. The stones are welded into the organic unity of the pyramid.

³⁹ *Ibid.*, pp. 297–298.

⁴⁰ *Ibid.*, p. 472.

⁴¹ *Ibid.*

Among the most important concepts introduced by the *Grundlinien der Philosophie des Rechts* it is necessary to mention the *Police* and the *Corporations* [*die Polizei und Korporation*]. These two institutions allow us to understand Hegel's political realism under at least three aspects: (1) first and foremost, as planned by Hegel, *Polizei* and *Korporation* did not exist in German reality – it suggests that the mole attempt is not to defend the existing as always rational (according to an abstract apology), but to accelerate, through thought, the concrete process that leads the real to become rational; (2) *Polizei* and *Korporation* are inserted in the concreteness of a specific socio-economic reality – that of the first development of capitalism; (3) they represent the attempt to escape from the accidental nature of the *system of needs*, constituting the bridge that marks the passage toward the State and the full realization of *Sittlichkeit*.

Interestingly, the *Polizei* do not have the same tasks that we recognize today. It represents the set of measures taken by the State to take action in the economic and social sphere, so that the collective interest can prevail over the accidents and inequality generated by competition among individuals. Together with the law enforcement function, it intervenes in the economic policy of the State, supervising and regulating the market. Hegel's gaze is still realistic. He does not condemn private property (indeed he defends it); moreover, he is perfectly aware that capitalism cannot be separated from free private initiative. What the philosopher claims by public power is a function of "higher regulation" that could be defined as rebalancing and mediation. As a matter of fact, "more blindly particular interest immerses itself in its selfish ends, the more it requires such regulation to bring it back to the universal."⁴²

Lastly, the *Polizei* have a further task: *social policy* implementation. It consists in remedying the social insecurity so intimately connected to modern industrial society. To clarify, it is about measures able to protect individuals from family indigence. Right to education, through the creation of public schools, and social security are the two great protective wings of the *Polizei* policy. The topic is always the same: getting out of the fortuitous, personalistic, and voluntary character of private morality

42 *Ibid.*, p. 385.

to make the *Universal* prevail through laws and institutions. The accident [*Zufälligkeit*] common sense must be replaced by the superiority of administrative measures.

Charity still retains enough scope for action, and it is mistaken if it seeks to restrict the alleviation of want to the particularity of emotion and the contingency of its own disposition and knowledge, and if it feels injured and offended by universal rulings and precepts of an obligatory kind. On the contrary, public conditions should be regarded as all the more perfect the less there is left for the individual to do by himself in the light of his own particular opinion (as compared with what is arranged in a universal manner).⁴³

One of the most significant aspects of the *Grundlinien der Philosophie des Rechts* is Hegel's recognition of class struggle. He understands the polarity and dualistic opposition in the capitalist system between proletarians and owners of the means of production. His analysis is so realistic and disenchanting that it denies the possibility for *civil society* to solve the problem of pauperism. However rich *civil society* is, it will never be rich enough to avoid poverty and the creation of plebs [*Pöbels*]. For this reason the philosopher imagines another form of mediation, designed to act specifically in the field of industry: *Korporation*. Corporations are the protection instrument of the industrial estate, indeed, considering the three estates in which Hegel divides society (agricultural, industrial, and bureaucratic), only the industrial one is exposed to the particularism of productive competition. Just as the *police* have the task of mediating in social particularism by making the individual, who finds himself thrown into it to reproduce his needs, a "child of civil society" [*Sohn der bürgerlichen Gesellschaft*], in the same way the corporate system has the task of giving a "second family" [*zweite Familie*] to the individual worker.⁴⁴

As already explained in his work on the constitution of Württemberg, Hegel reaffirms his political realism in the formula of organicism: A pyramidal structure consisting of square boulders, each of which must fit together with the others, finding strength and support in the whole. The

43 *Ibid.*, pp. 388–389.

44 *Ibid.*, p. 394.

attempt is to affirm the private interest of individuals within the general will [*volonté générale*]. Hence the attempt to create an organic body, objectification of the Idea, which splits itself into the spheres of *family* and *civil society* synthesized in the State, the moment in which the Idea returns in and of itself. However, and as we have seen, it can do so only thanks to a recognition system that passes through determined mediation, the only way in which the individual does not lose himself in a mass without form, but recognizes himself as part of the whole, his private will coinciding with the public one: "Individuals do not give up or forget their selfish interests in adopting the perspective of the general will; rather even in their experience of their own interests, they have already adopted forms of thought and behavior that relate them to the general functioning of the state."⁴⁵ The Hegelian philosophical proposal of mediations can therefore be seen as a theoretical effort to reunite morality with the world.

Hegel's objection to Kantian morality, or "virtue," is that it is abstract, outside the world, an ought, and it believes that only it can realize morality. It has severed itself from the concrete actual world of interest and passion, and it faces it as an other. From this superior position it wants to direct the world. Instead, morality must be rooted in the world.⁴⁶

5 Hegel and Our Days: The Night All the Cows Are Black

The previous pages have tried to clarify two concepts: (1) Hegel's political realism expressed in *Sittlichkeit*; (2) the crucial role of *mediations* in the realization of State unity. It would be pleonastic to remember that Hegel's writing was inserted in a nineteenth-century context and referred to a monarchical political model. He could never have conceived of a democratic system, seen as "anarchy," in which everyone gets lost in the disintegration of the whole. During the history of thought, his organicist model

45 N. Ross, *On Mechanism in Hegel's Social and Political Philosophy* (New York-London: Routledge, 2008), p. 112.

46 Kain, "Hegel's Political Theory and Philosophy of History," p. 349.

has had to undergo several criticisms – one of the best known coming from Popper, who called Hegel (among others) the enemy of “open society.”⁴⁷ On closer inspection, the list of Hegel’s critics would be long,⁴⁸ but the question I would like to ask is the following: Can the Hegelian political realism expressed in *mediations* be useful for our democracies?

It has been more than forty-five years since Samuel Huntington wrote these words, in reference to United States political parties: “Party identification has dropped sharply, and the proportion of the public which consider itself Independent in politics has correspondingly increased.”⁴⁹ Words that seem to trace a common thread more than four decades long and which leads to what Adam Przeworski wrote just two years ago: “Something is happening. ‘Anti-establishment,’ ‘anti-system,’ ‘anti-elite,’ ‘populist’ sentiments are exploding in many mature democracies.”⁵⁰ Until now the crisis of democracy has found no cure. Rather, both with the globalization of markets and the digital revolution, the breach opened in the heart of representation seems to have even widened. In a recent article, published in January 2021, Professor Salvatore Cingari recalled the problem of “market populism.”⁵¹ It is characterized by the desire to “scrap” all those “devices”

47 See K. R. Popper, *The Open Society and its Enemies*, vol. 2: *The High Tide of Prophecy: Hegel, Marx, and the Aftermath* (London: George Routledge & Sons, 1945).

48 In *Freedom and Its Betrayed*, Isaiah Berlin writes: “It is [Hegelian philosophy] a vast mythology which, like many other mythologies, has great powers of illumination as well as great powers of obscuring whatever it touches.” See Id., *Freedom and Its Betrayed. Six Enemies of Human Liberty* (London: Chatto & Windus, 2002), p. 74.

49 M. J. Crozier, S. P. Huntington and J. Watanuki, *The Crisis of Democracy. Report on the Governability of Democracies to the Trilateral Commission* (New York: New York University Press, 1975), p. 85.

50 A. Przeworski, *Crises of Democracy* (Cambridge: Cambridge university Press, 2019), p. 1.

51 S. Cingari, “Populismo di mercato,” *Micropolis*, vol. XXVI, no. 1 (January 2021), p. 3. For an explanation of the concept of *populism* and to understand the state of the art up to the 2000s, see: P. Taggart, *Populism* (Buckingham: Open University Press, 2000). See also: T. Frank, *One Market Under God: Extreme Capitalism, Market Populism, and the End of Economic Democracy* (London: Secker & Warburg, 2001); M. Revelli, *The New Populism. Democracy Stares into the Abyss* (London-New York: Verso, 2019).

that could diminish the centrality of the market and its direct relationship with individuals: political parties and trade unions above all. Politics itself is perceived as parasitic inasmuch as it is unproductive and expensive. On the contrary, the virtues of *civil society* and its mindset, solely devoted to the pursuit of private interests, are exalted. However, it is precisely in this generic word, *populism*, regardless of the adjectives that can be added to it, the true modern problem of democracies and political parties as their vital organs. One of the most evident characteristics of *populism* is in fact the will to eliminate all forms of *mediation*. The paradox in which it expresses itself is that of conceiving on the one hand an amorphous mass generically called *people* and, on the other hand, the idea that charismatic leaders can establish a direct relationship with every single atom of this aggregate. The question is whether democracy can live without the traditional role of political parties, to which Gramsci recognized the function of the “new Prince,”⁵² and their action of mediation, to embrace the idea of a relationship *immediate* between politics and *civil society* (strictly separated). If the answer is negative, we can conclude that, regardless of the specificities of one’s time (estates, classes, police, and corporations), taking up Hegel’s great teaching, even for democratic systems, could be helpful. In essence, it would mean abandoning *abstraction* to marry forms of *mediation* capable of making the individual truly free. The great ideology of *absolute freedom* often forgets one fact: that its exasperation (since Plato’s time) coincides with its disintegration. If everyone could really be self-sufficient, there would be no problem; the history of humanity up to our days, however, seems to tell us quite the opposite.

52 A. Gramsci, *Quaderni del carcere*, vol. 3 (Torino: Einaudi, 2001), p. 1558. “The modern prince, the myth-prince, cannot be a real person, a concrete individual. It can only be an organism, a complex element of society in which a collective will, which has already been recognised and has to some extent asserted itself in action, begins to take concrete form. History has already provided this organism, and it is the political party – the first cell in which there come together germs of a collective will tending to become universal and total.” See Id., *Selection from the Prison Notebooks*, trans. by Q. Hoare and G.N. Smith (New York: International Publishers, 1992), p. 129.

As Bauman denounced: “Divided we move.”⁵³ A path not shared would have been, for Hegel, a path of moles. What can be said, then, about so many moles that in their individualism think they are owls? This is perhaps one of the most dramatic aspects of populism: to boast the idea that every single head can have a “direct” relationship with legitimate power. We all know, after all, that this idea is impractical (even with the most advanced tools) and we also know that behind the fake removal of *mediations* there is only an obscuring of them. It is exactly what happens in the market – the fact that we can receive at home every kind of product, that we can choose on our devices every kind of song, of book, as if there was a real direct relationship between us and the object, prevents us from seeing everything that moves in between and that however exists. The serious crisis of economic mediations, the *unions*, seems to have the same face as that of political mediations, the *parties*. Can the “new Prince” abandon his cultural and “hegemonic” role to reduce himself to a mere label? Once again, Hegel’s political philosophy can help us. He had perfectly understood that a complex society can only be articulated through *mediations*. Such *mediations*, instead of canceling the differences in a “generic citizen,” should make everyone part of the pyramid (body politic), each with its differences, and its interests. Representative democracies, starting from the second half of the twentieth century, perfectly understood this lesson by making economic and political *mediations* their constituent pillars. The real question is whether all this thirst for *immediacy*, and the new technology that supports it, can now engulf any kind of *mediation*. Certainly, Hegel would not lack metaphors to describe our time and its revolver shots, which generate the illusion of canceling the labor of Liberty. I quote the best known from the preface to the *Phänomenologie des Geistes*: the night all the cows are black.

53 Z. Bauman, *Globalization: The Human Consequences* (Cambridge: Polity Press, 1998) p. 85.

6 From Nation to Religion

Hegel's Critique of the Political Economy of Colonialism

1 The Hegelian Approach to Political Economy

The historical revision of Hegel's concept of political economy has had various points of inflection since 1891, when Georgi Plekhanov insisted on its importance in comprehending modernity's processes of colonial expansion beyond specifically Marxist formulations. However, while for Plekhanov, "Ricardo was the last economist who, though still a bourgeois in heart and soul, was intelligent enough to understand the diametrical opposition of interest between labour and capital,"¹ Hegel "understood more clearly than all economists of his time, not excepting Ricardo, that in a society which is based on private property, the growth of wealth, on the one hand, is inevitably accompanied by the growth of poverty, on the other."² Hegel, who had philosophically understood a problem elusive to the "vulgar and bourgeois economy," according to Marxist nomenclature, managed to grasp that a society hinged on the labor/capital contradiction was necessarily "forced to go outside from its own limits and to seek new markets, to turn to world trade and colonisation."³

Aside from Plekhanov, only Lenin took much notice of Hegel's formulation. Although contemporary debates over whether Lenin's reading of the

1 G. Plekhanov, *Selected Philosophical Works*, vol. I (Moscow: Progress Publishers, 1974), p. 84.

2 Plekhanov, *Selected Philosophical Works*, vol. I, p. 415.

3 Plekhanov, *Selected Philosophical Works*, vol. I, p. 416.

Science of Logic influenced his adherence to the Hegelian conceptualization of colonialism,⁴ Lenin's historical and epistemological context would have surely led him in the same direction. While both Bukharin and Luxemburg, in their studies on imperialism, discuss the logical function that dialectics plays in the processes of representing and exposing the transformation of capitalist spaces in the early twentieth century, they consider Hegel a mere epistemological precedence to the Marxian criticism of political economy, as do most of the first generations of Western Marxism.

Shlomo Avineri, not precisely a classical Marxist, resumed Plekhanov's work, adding that Hegel's *Philosophy of Right* not only offers an abstract problematization of capitalism's contradictions, but also "a theory of pauperization, social polarization, economic imperialism and colonization"; the problem, Avineri insisted, was that despite Hegel's lucidity, "this is the only time in his system where Hegel raises a problem – and leaves it open."⁵ Several years later, the economist Albert Hirschman published an article reinterpreting the supposed gap identified by Avineri as a proactive aspect of Hegelian philosophy. For Hirschman, the three main aspects of Hegel's conceptualization of bourgeois societies are, due to their inherent reproductive functions, (i) an "increasing maldistribution of income," resulting in (ii) a "temporary or permanent shortfall of consumption in relation to production," which finally develops into (iii) "the search for new outside markets on the part of the advanced capitalist country among countries that have not yet been 'opened up' by capitalist enterprise."⁶ From this perspective, according to Hirschman, we find a rebuttal of Say's Law and Hegel's own parallel elaboration of Sismondi's theses on over-production/underconsumption, both "particularly striking guesses based

4 K. Anderson, *Hegel, Lenin and Western Marxism. A Critical Study* (Illinois: University of Illinois Press, 1995); S. Kouvelakis, "Lenin as Reader of Hegel: Hypotheses for a Reading of Lenin's Notebooks on Hegel's 'The Science of Logic,'" in S. Budgen, K. Stathis and S. Žižek (eds), *Lenin Reloaded: Toward a Politics of Truth* (Durham and London: Duke University Press, 2017), pp. 164–204.

5 S. Avineri, *Hegel's Theory of the Modern State* (Cambridge: Cambridge University Press, 1972), p. 154.

6 A. Hirschman, "On Hegel, Imperialism and Structural Stagnation," *Journal of Development Economics*, vol. 3, issue 1 (March 1976), pp. 1–8.

on the imaginative use of the dialectic method.”⁷ More than a question of whether we can identify a strictly Hegelian theory of underconsumption and overproduction, which, according to Hirschman, ultimately implies a Hegelian theory of economic stagnation, the radical analytical gesture lies in reintroducing Hegel to the history of economic thought, not only as a logical precedence of the Marxian criticism of political economy, but as a reflection with its own merits. Similarly, David Harvey, from a Marxist perspective, attempted to introduce Hegel into the history of geographic thought. The logic of capitalism’s “spatial fix,” far from commencing with the early twentieth-century theses on imperialism, would eventually wrap its roots around Hegel’s conceptualization of dialectics in bourgeois society.⁸

All of these investigations significantly contributed to enlarging the disciplinary margins from which Hegelian philosophy was discussed during the last quarter of the twentieth century and the first years of the twenty-first. However, and despite the notable revitalization of Hegel’s philosophical gesture, it is necessary to read these debates from a perspective where all of what is said on Hegel’s conceptualization of political economy should be interpreted as a speculative *Wirtschaftsphilosophie* and not a normative *Ökonomie*.⁹ The problem with the formulation of a normative economy stems from disregarding observations by Hegel himself on philosophy as a comprehensive exercise: For example, although Hegel defines the purpose

7 Hirschman, “On Hegel, Imperialism and Structural Stagnation,” p. 3. Some studies also show a direct influence of Sismondi on Hegel, minimizing the autonomy of Hegelian deduction. L. Pradella, “Hegel, Imperialism, and Universal History,” *Science & Society*, vol. 78, no. 4 (October 2014), p. 435.

8 D. Harvey, “The Spatial Fix – Hegel, von Thünen and Marx,” *Antipode*, vol. 13, issue 3 (December 1981), pp. 1–12. From a different perspective, although with the same objective of displaying the radicalness of Hegelian dialectic and its value for geography, important works include G. Mann, “A Negative Geography of Necessity,” *Antipode*, vol. 40, issue 5 (November 2008), pp. 921–934 and L. Pohl, “Hegel and the Shadow of Materialist Geographies,” *An International Journal for Critical Geographies*, vol. 18, no. 2 (2019), pp. 285–307.

9 E. Rózsa, “Der Prinzip der Besonderheit in Hegels Wirtschaftsphilosophie,” in E. Rózsa and M. Quante (eds), *Hegels Konzeption praktische Individualität* (Paderborn: Mentis Verlag, 2007), p. 182. Rózsa’s critique, of course, is influenced by B. Priddat, *Hegel als Ökonom* (Berlin: Duncker & Humblot, 1990).

of political economy as an effort “to explain mass relationships and mass movements in their qualitative and quantitative determinacy and complexity,”¹⁰ this precept should not be read as an objective in itself, rather how philosophy considers the work of political economy, for “the infinitely varied circumstances which take shape within this externality as the essence manifests itself within it, this infinite material and its organization, are not the subject-matter of philosophy.”¹¹ While political economy shows “how *thought* extracts from the endless multitude of details, with which it is initially confronted, the simple principles of the thing, the understanding which works within it and controls it” and, therefore, has a “philosophical point of view,”¹² this does not mean that its work is the same as philosophy’s.

If philosophy “is *its own time comprehended in thoughts*,”¹³ comprehension is irreducible to every moment of presentation (*Darstellung*) of that same historic time. Likewise, narrative fiction, considered the expression of thought, implies the comprehension of logical relationships between every moment. Therefore, despite the economic lucidity of Hegel’s conceptualization of political economy, it is philosophically inseparable to political economy’s relative links with the State, art, and religion.

As Fredric Jameson has pointed out, each of these spheres has its own meaning, although they remit their value of truth to the relative position they fulfill in the composition of reality’s logical presentation. Regardless, he insists this is not “simply a matter of organization or *Darstellung* (presentation, staging), according to which Hegel projects the narrative fiction of an unfolding series or sequence in order the more effectively to string the pearls of the categories one after the other,” in which case, each category could refer – as a reference of reality – to a formal encyclopedic dimension of thought; if not, and quite on the contrary, “categories are thus all situations- or context-specific, provided we understand there is no overall situation or context, no overall conceptual landscape, given in advance.”¹⁴

10 G. W. F. Hegel, *Elements of the Philosophy of Right* (Cambridge: Cambridge University Press, 2014), p. 227.

11 Hegel, *Elements of the Philosophy of Right*, p. 21.

12 G. W. F. Hegel, *Werke* (Frankfurt am Maim: Suhrkamp, 1986), vol. XI, p. 11.

13 Hegel, *Elements of the Philosophy of Right*, p. 21.

14 F. Jameson, *Valences of the Dialectics* (London: Verso, 2009), p. 80.

This means that, despite efforts by economists and geographers, as well as Marxists who saw a new science in the Marxian criticism of political economy, the economic categories philosophically interpreted in Hegelian theory have a value relative to both their general and specific narrative context, ultimately bypassing any reference to other spheres of thought by virtue of a new narrative context. With this understanding of the sense of a *Wirtschaftsphilosophie* we can proceed to the specific problematization in accordance with the narrative fiction of political economy.

2 Labor/Capital and Colonization

A significant part of specialized Hegelian studies has interpreted the writings prior to *The Phenomenology of Spirit* as a radical philosophical attitude entirely different from the political conformism characteristic of the Berlin period. While this *locus communis* lacks consistency today, losing practically all validity over the last several decades, it is relevant to recognize that specific aspects of Hegel's conceptualization of the present adopt special intensities and dimensions throughout his intellectual trajectory.

When Hegel offers his first definition of political economy as a science that studies the "universal mutual dependence with regard to physical needs and the labour and accumulation [of resources] which these require,"¹⁵ we understand that individualized behavior of personal possessions requires the legal sphere to avoid the arbitrary sense of contradiction in satisfying needs, such as envy, or applying restrictive tax rates.¹⁶ Now immersed in the determinations of law, possession – as a means of satisfying needs of subsistence and pleasure – appears as private property universally recognized within an ethical community both "in private contract and monetary exchange," giving birth to the movement of bourgeois

15 G. W. F. Hegel, *Political Writings* (Cambridge: Cambridge University Press, 1999), p. 141.

16 Hegel, *Political Writings*, p. 142.

society.¹⁷ However, the legal sphere does not resolve how trends freely move toward the difference of multiplying means that satisfy needs, thus, “great wealth, which is similarly bound up with the deepest poverty (for in the separation between rich and poor labour on both sides is universal and objective), produces on the one side in ideal universality, on the other side in real universality, mechanically,” therefore, the wealth of a society opposes itself as particularized wealth and poverty to the extreme, which, in this polarization, “the absolute bond of the people, namely ethical principle, has vanished, and the people is dissolved”¹⁸ and, with this bond dissolved, for example, “a man who is starving to death has the absolute right to violate the property of another.”¹⁹

Aside from the general problem of breaking the ethical bond – a contradiction in itself – the mechanization of pauperized labor necessarily intersects with the problem of recognition within the larger legal sphere. As Hegel points out, “Since government is a subsumption of the particular under the universal, in this concept the moments of the universal opposed to the particular may be distinguished into two, like the subsumption itself; so this subsumption is again a double one, i.e., the real one and the ideal one – the former being the one in which it is formal universality under which the particular is posited, the latter being the true one in which the particular is posited as one with the universal”;²⁰ it can be deduced that a part of the population does not *enjoy* the benefits of subsumption. This surplus of labor power “that finds itself unrecognised must gain this recognition by war or colonies,”²¹ and so, “Europe has sent its surplus population to America in much the same way as from the old Imperial Cities.”²²

17 G. Mann, “State of Confusion. Money and the Space of Civil Society in Hegel and Gramsci,” in M. Ekers, S. G. Hart, S. Kipfer and A. Loftus (eds), *Gramsci: Space, Nature, Politics* (Oxford: Wiley-Blackwell, 2013), pp. 104–120.

18 Hegel, *System of Ethical Life*, p. 171.

19 G. W. F. Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV (Stuttgart-Bad Cansstatt: Frommann-Holzboog, 1974), p. 341.

20 Hegel, *System of Ethical Life*, p. 164.

21 Hegel, *System of Ethical Life*, p. 164.

22 G. W. F. Hegel, *The Philosophy of History* (Ontario: Kitchener, 2001), p. 99.

The first relevant aspect of Hegel's early attempt to deal with the problem of colonialism is the context: During this era, the processes of colonization seem to have been a practical fix to the population excess of a society stricken by the division of labor, replicating its own pseudo-Malthusian thesis on the quantitative dimension of the conflicts that a State can process.²³ The second relevant aspect is that colonialism appears as a concrete possibility, but still only a possibility – and not a necessity – because those segments of the population excluded from production and consumption processes could easily ignore the ethical recognition of the State or society in general. The most spectacular difference between these two derivations, in relation to Hegel's later formulations from Heidelberg and Berlin, lies in the fact that the quantitative aspect would acquire a qualitative dimension and, all the while, the possibility of colonialism as a spatial fix would acquire a dimension of necessity.

Hegel's rereading of Adam Smith, his study of Ricardo and Say, his analysis of reports on the English working-class and poor, and, of course, finishing the *Science of Logic*, allowed him to elaborate from 1817 a different approach to the problem of political economy in general, and of colonialism in particular, from both historic-philosophical and epistemological perspectives.²⁴ While his lectures at Heidelberg offer a relatively invariable nominal definition of political economy as a science that, "deals simply with the contingency of the needs of individuals,"²⁵ the unequal participation in general wealth (*Vermögen*) no longer appears as a consequence of the division of labor, rather it "has its starting point as such in the contingency and inequality that are to be found among different individuals in regard to modifications and needs, in particular to the way they are satisfied or to kinds of enjoyment."²⁶ This is also expressed in the *Rechtsphilosophie* of 1820:

23 S. Ellmers, *Freiheit und Wirtschaft Theorie der bürgerlichen Gesellschaft nach Hegel* (Bielefeld: Transcript Verlag, 2015), p. 15.

24 N. Waszek, *The Scottish Enlightenment and Hegel's Account of 'Civil Society'* (Dordrecht: Kluwer Academic Publishers, 1988) and L. Herzog, *Inventing the Market. Smith, Hegel, & Political Theory* (Oxford: Oxford University Press, 2013).

25 G. W. F. Hegel, *Lectures on Natural Right and Political Science. The First Philosophy of Right* (Berkeley: University of California Press, 1995), p. 166.

26 Hegel, *Lectures on Natural Right and Political Science*, p. 169.

The *possibility of sharing* in the universal resources – i.e. of holding *particular* resources – is, however, *conditional* upon one's own immediate basic assets (i.e. capital) on the one hand, and upon one's skill on the other; the latter in turn is itself conditioned by the former, but also by contingent circumstances whose variety gives rise to *differences* in the *development* of natural physical and mental aptitudes which are already unequal in themselves. In this sphere of particularity, these differences manifest themselves in every direction and at every level, and, in conjunction with other contingent and arbitrary circumstances, necessarily result in *inequalities in the resources and skills* of individuals.²⁷

Here Hegel modifies the presentation of the problem, for inequality is not only a consequence of distribution but also its basis. In many passages overlooked by Marxism, Hegel manages to see with particular clarity the way in which the inequality of capital is reproduced and intensified in its historic behavior, even preceding relevant aspects on what would later be called the property-owning or unproductive classes. Therefore, Hegel says, “in the state economy [*Staatswirtschaft*] the capitalists, the bumblebees of society, they are not productive, do not bring means [*Mittel*] to the others, they have these means [*Mittel*], but do not produce any,”²⁸ and “the bigger the capitalist, the bigger undertakings are to be carried out with it and the less profit the owner can be content with, which in turn increases capital.”²⁹ The consequences also influence the competence within a market that, we can assume for now, is restricted and closed to a national aspect – in the same way Fichte³⁰ theorized – so that, “as wealth becomes greater, it is concentrated in a few hands, and once this difference is that there is large capital in some hands, this allows it to be acquired in a cheaper way than with a small fortune, so the difference becomes greater.”³¹ Regarding this trend, Hegel continues: “If a branch

27 Hegel, *Elements of the Philosophy of Right*, p. 233.

28 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 499.

29 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 609.

30 J. G. Fichte, *The Closed Commercial State* (Albany: State University of New York Press, 2012). For a complete study of the political context of the philosophical theses on national markets see: I. Nakhimovsky, *The Closed Commercial State. Perpetual Peace and Commercial Society from Rousseau to Fichte* (Princeton: Princeton University Press, 2011), especially the section on “Prussian and the Anglo-French Debate of 1800,” pp. 84–97.

31 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 494.

of industry comes into the hands of a few, they have no legitimate monopoly, but they have it through their large capital, and this is the worst of all monopolies.”³²

The problem, of course, is that the tendency to monopolize as a form of competition for market share intensifies the distributive differential character of capital, such as means of production and satisfaction of needs, leading impoverishment to the contradictory logic of sustained reproduction. Therefore, “in the case of great impoverishment, the capitalist finds many people who work for low wages, thereby increasing his profit and this again has the consequence that the lesser capitalists fall back into poverty.”³³ This contradiction in the contractual character of the labor/capital relationship implies that “people render themselves *worthless* and impoverished not only through failure to develop skills and thereby ‘universalize’ themselves, but even through universalization itself.”³⁴ Therefore, if “despite an *excess of wealth*, civil society is *not wealthy enough*,”³⁵ Hegel would conclude that, “the only question is how to remedy poverty.”³⁶

According to Hegel, the tendency to polarize distribution through participation in production and consumption is the “dialectic” that bourgeois societies are forced to use to search for new spaces, which, on the one hand, render population excess as a principle of family life and, on the other, expand commercial circuits. Hegel’s use of England as an example is no coincidence, of course, for he observes how, in the context of Pax Britannica, the English bourgeoisie – and not the State itself – led

32 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 627.

33 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 610.

34 N. Mowad, “The Purest Inequality. Hegel’s *Critique of the Labor Contract and Capitalism*,” in A. Buchwalter (ed.), *Hegel and Capitalism* (Albany: University of New York Press, 2015), p. 73.

35 Hegel, *Elements of the Philosophy of Right*, p. 267.

36 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 610. Recent bibliography on the problem of poverty in Hegel’s *Philosophy of Right* is truly notable, but we limit our mentions to only two studies that we believe the most relevant in the context of this paper: F. Ruda, *Hegel’s Rabble. An Investigation into Hegel’s Philosophy of Right* (London: Bloomsbury, 2011) and T. Pimenta, “The Abyss of Right: Hegel’s Philosophy of Right and the Question of Poverty,” *CEconomia*, vol. 10, no. 4 (2020), pp. 729–757.

the process of colonial expansion: "The English, or rather the East India Company, are the lords of the land."³⁷ However, and parallel to the first approximation of 1802/03, this process was only possible if a new rule of law codified possession as property and assured the legal means of production and consumption:

The material existence of England is based on commerce and industry, and the English have undertaken the weighty responsibility of being the missionaries of civilization to the world; for their commercial spirit urges them to traverse every sea and land, to form connections with barbarous peoples, to create wants and stimulate industry, and first and foremost to establish among them the conditions necessary to commerce, viz. the relinquishment of a life of lawless violence, respect for property, and civility to strangers.³⁸

Here Hegel introduces two distinctions that derive from his reflections on the behavior of capital, absent in the analysis of his contemporaries. As he notes in an observation on the transformation of money into capital, in the past the valuation of money and possessions could be random and subjective since its function was momentarily considered in virtue of a conceivable need. However, in modernity the conceivable character of need is not self-evident, rather explained by the universal character of its mediation in a so-called System of Needs that refers to the original unequal distribution of capital.³⁹ Now that money is a universal expression of needs and its mediations (capital) it must be reproduced for a profit: "now money is a capital that can be used, so I have to be compensated by the other person as soon as I let him use it."⁴⁰ In other words, we are entering a dimension of valuation of money in the Marxian sense of the term.

37 Hegel, *The Philosophy of History*, p. 160.

38 Hegel, *The Philosophy of History*, p. 476. From this perspective, Polanyi is correct when he asserts that "Ricardo and Hegel discovered from opposite angles the existence of a society that was not subject to the laws of the state, but, on the contrary, subjected the state to its own laws." K. Polanyi, *The Great Transformation. The Political and Economic Origins of our Time* (Boston: Bacon Press, 2001), p. 116.

39 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 261.

40 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 262.

With this precedent, Hegel would distinguish between systematic processes of colonization centrally carried out by particular States, such as the Greeks, and sporadic processes of colonization carried out by bourgeois societies in their own dialectic of necessary spatial expansion, such as in the case of individual German migrations to the Americas and Russia.⁴¹ Despite their systematic or sporadic dimensions, both processes share the contingent character of bonds. On the contrary, the colonization of the *neue Zeit* – in Hegel’s words – occurs without “that particular purpose” because “the citizens of the colonies have fewer rights here than the citizens of the fatherland.”⁴² A logical review of the dialectic of needs can explain the reason behind this absence of full rights: If the mass of modern colonists corresponds to the impoverished population or those excluded from the colonial metropolis – considering that, for Hegel, colonized space does not constitute a spiritual equivalence except for imposing respect for the right to property – the colonization process occurs in unequal conditions which Hegel characterizes through the establishment of a new principle of family life. This is why, from a Hegelian perspective, colonists tended to shape their own political sphere under the perspective of independence.⁴³

However, when Hegel argues that, “for England, the population of America has opened up a large market so enormously, Spain has not turned it around so well,”⁴⁴ he not only establishes a historic difference between Spain’s inability to transform colonial wealth into capital,⁴⁵ but also interprets two different forms of expansion which, although seemingly equivalent at times, are distinguished as specific forms of *colonization* and *conquest*. In a sort of geopolitical approach, Hegel argued that, “South America was conquered [*erobert*], but North America colonized [*kolonisiert*].”⁴⁶ The difference is that, in the processes of conquest, the absence of decisive bonds with the colonial metropolis translated into volitional subjective

41 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 614.

42 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 615.

43 Hegel, *Philosophy of Right*, p. 269.

44 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 616.

45 E. Meiksins Wood, *The Origin of Capitalism. A Longer View* (London: Verso, 2002) p. 150.

46 Hegel, *The Philosophy of History*, p. 101.

behavior, while in the colonization of North America, for example, “the whole attention of the inhabitants was given to labour, and the basis of their existence as a united body lay in the necessities that bind man to man, the desire of repose, the establishment of civil rights, security and freedom, and a community arising from the aggregation of individuals as atomic constituents; so that the state was merely something external for the protection of property.”⁴⁷ From a Hegelian perspective, this individuality cannot be spontaneous for it responds to specific conditions of spiritual development, which, in this case, are determined by the principle of commercial individuality ingrained in English society. However, individuality understood as such is not exclusive to colonial English spaces as a privileged representation of the expansion of bourgeois society, rather it constitutes a point of inflection for the universality present in the spatial behavior of capital.

The relationship between universality and contingency as a subject matter of political economy is no longer limited to the form in which agreements involve the quantitative and qualitative behavior of the means of production and satisfaction of needs. It now also comprehends the subjective principle of freedom, which, for Hegel, entails the participation in processes of production, consumption, distribution, and accumulation. The notion of individuality, usually associated with this subjective movement, emerges from the “*subjective selfishness*,” which “turns into a *contribution towards the satisfaction of the needs of everyone else*.”⁴⁸ Individuality is thus constituted by a separation from immediate references of the self and the acknowledgment of one’s place in the universality of social processes that produce and satisfy needs, so that “the individual attains actuality only by entering into *existence* [*Dasein*] in general, and hence into *determinate particularity*.”⁴⁹

If Hegel proposes that modern colonized spaces tend to quantitatively and qualitatively replicate the economic relations of the colonial metropolis, this means that the individual principle of modernity is replicated *despite*

47 Hegel, *The Philosophy of History*, p. 102.

48 Hegel, *Elements of the Philosophy of Right*, p. 233.

49 Hegel, *Elements of the Philosophy of Right*, p. 238.

differences of class (*Klasse*) and stratum (*Stände*) that shape new commercial spaces on a global level.⁵⁰ This principle of individuality, however, does not depend exclusively on the economic principles of bourgeois society. We must recognize the prior religious dimension that shapes its concrete expression, its “entering into *existence*” in the process of colonization.

3 The Religious Order of the Economical Disorder

The conceptual difference between conquest and colonization is that the first process logically subsumes new spaces without modifying the principle conducts of the dependent societies, while in colonial processes new spaces are not subsumed but constituted dialectically as fundamental transformations. However, when Hegel distinguishes between processes of conquest and colonization, he underscores some converging aspects in the derivations of his conceptualization of political economy in the context of writing universal history. And this is where the economic and religious dimensions come into conflict.

The theses on the relation between protestant religion and the origins of capitalism popularized by Max Weber and Ernst Troeltsch in the early twentieth century looked to Hegel as a recognizable predecessor, despite their differences.⁵¹ Weber, for example, in a letter to Franz Eulenburg, dated May 11, 1909, wrote that in terms of representing modernity, only two possibilities existed, each plausible but opposite in nature: “Hegel’s or ours.”⁵² Curiously, Weber’s mentions of the Hegelian conceptualization of political economy, colonialism, and religion are scarce, in comparison to his discussion of the notion of spirit and, even, epistemological functions

50 Hegel, *Vorlesungen über Rechtsphilosophie 1818–1831*, vol. IV, p. 599.

51 M. Weber, *The Protestant Ethic and the Spirit of Capitalism* (London: Routledge, 1992) and E. Troeltsch, *Protestantism and Progress. A Historical Study of the Relation of Protestantism to the Modern World* (New Brunswick and London: Transaction Publishers, 2013).

52 M. Weber, *Gesamtausgabe*, vol. II (Tübingen: J. C. B. Mohr, 1994), p. 172.

of dialectics as a deductive method.⁵³ The case of Troeltsch is perhaps more telling, for he asserts that, “in the Hegelian school,” Protestantism “is customary to extol it as the ethic and religion of immanence.”⁵⁴ The problem, Troeltsch insists, is that this interpretation of Protestantism assumes “a developing and transforming philosophic outlook” that seeks an “essence” or an *a priori* “fundamental [historical] tendency.”⁵⁵

In the epistemological context of Troeltsch, as in all of nineteenth- and early twentieth-century Germany, immanence refers to the scheme of consequences and remnants of the *Pantheismusstreit*, according to which the universal practice of theism would logically turn into a radical form of secular pantheism, preceding atheism as a social and political horizon. Immanence as a precedent or counterpart to modernity’s secularization would appear in Hegelian philosophy as the explanation of the transfer of social conflict and social subjectification from a religious to a political sphere.

This is where Hegel begins to sew together his argument against Catholicism or, rather, to systematize the specific differences between Catholicism and Protestantism. Beyond the important debate on transubstantiation and consubstantiation, the controversy between Hegel and Schleiermacher entails a dimension characteristic of subjectivity that influences the understanding of how the alleged ethical bond is formed, for, as Hegel would say, if the feeling (*Gefühl*) of dependence (*Anhängigkeit*) defines Christianity, man (*Mensch*) either shares the same freedom as a dog or, quite the contrary, never acquires freedom because he is situated in that unreachable dimension of transcendentalism.⁵⁶ In the first case, the

53 M. Weber, *Economy and Society. An Outline of Interpretative Sociology* (Berkeley and London: University of California Press, 1978), p. 870.

54 Troeltsch, *Protestantism and Progress*, p. 22.

55 Troeltsch, *Protestantism and Progress*, p. 25.

56 Hegel, *Werke*, vol. 11, p. 58. For Schleiermacher, this impossibility constitutes reality and, therefore, our awareness of it: “It is clear, to begin with, that the antithesis between the inability to inform all moments of life with the feeling of absolute dependence and the corresponding ability communicated to us by the Redeemer, presupposes that feeling itself and a knowledge of it.” F. Schleiermacher, *The Christian Faith* (London: Bloomsbury, 2016), p. 123.

problem is that, “the natural human being is not liberated within itself vis-a-vis itself and external nature. It is the human being of desire of savagery and self-seeking, of dependence and fear.”⁵⁷ All the while, this dependence is founded on the pre-reflexive variability of the bond with nature in which “insipid possibilities that proceed from abstractions divorced from such circumstances,” and “not from concrete conditions,”⁵⁸ omit the function of labor and reflection as moments in which one can “determine oneself according to the universal.”⁵⁹ In the second case, the problem is that transcendentalism understood as an exteriority is not resolved in the bond with the Eucharist because, just as in the previous case, it refers to an exterior nature: Christ “is in this *thing* through the consecration of the priest: the divine is to be found in this externality.”⁶⁰ And, therefore, “the *Catholic* religion, and all of its externality and lack of freedom depends upon this externality of God in it.”⁶¹

This same feeling of dependence sustains the relationship of the Catholic community with its Church and with society in general,⁶² eventually deriving in a dissociation between the principle of individual freedom and an external (*außerliche*) universality: “since in Catholicism the subject is something external, under the sway of the church, we find the Catholic Church demanding that the secular field should be under its sway too. But since the secular world also constitutes human freedom, it resists this demand fiercely.”⁶³ This is due to the fact that, “the highest ethical life in the state rests upon the activation of rational, universal will; for in the state the subject has its freedom, which is brought to full reality therein,” reason for which, when the Church assumes “a strict obedience” of free

57 G. W. F. Hegel, *Lectures on the Philosophy of Religion*, vol. III (Los Angeles: Los Angeles University Press, 1984), p. 94.

58 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 95.

59 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 93.

60 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 236.

61 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 373.

62 Ultimately, what Hegel cannot concede to Schleiermacher is that the feeling of absolute dependence is a form of self-consciousness and, furthermore, this is “equally valid of personal feeling and of sympathetic and social feeling.” Schleiermacher, *The Christian Faith*, p. 186.

63 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 373.

subjectivity, this very assumption socially seems like an imposition, that is, a subordination of will (*Wille*) to arbitrariness (*Willkür*), because “the worldly wisdom that recognizes the true in actuality has come forward against it” – in other words, it does not recognize its freedom. In this context, Hegel immediately continues to insist that, “In Catholic states religion and state thus stand opposed to one another once subjective freedom establishes itself in human beings”⁶⁴ and, from this perspective, it is not unusual to interpret the dissociation of Catholicism as a process of secularization and politicization of reality.

That said, we do not aim to nurture the specific debate on the function of Protestantism in the early formation of capitalist subjectivity through puritan migration or accumulation, rather Protestantism’s function in the configuration of the political order of colonial spaces by opposing conquered lands from a Catholic trajectory. When Hegel declares that, “South America, where the Spaniards settled and asserted supremacy, is Catholic; North America, although a land of sects of every name, is yet fundamentally, Protestant,”⁶⁵ he also refers to one of the central aspects of his critique of Catholicism: In the Spaniards’ attempt to expand their territories, “their desires [*Willkür*] found a larger scope” and, since arbitrariness (*Willkür*) is a restrained subjectivity, their activity means they “took possession of South America to govern it, and to become rich.”⁶⁶

For Hegel, this confessional character translated into the Jacobin State and the Catholic Spanish State, both tormented by the fanaticism (*Fanatismus*) characteristic of the sentiment of confidence (*Zutrauen*) and dependence (*Abhängigkeit*).⁶⁷ From this perspective, Hegel, on the same page as the lessons on philosophy of universal history, criticizes Robespierre for speaking in the name of the State, all the while criticizing Catholicism’s essence of constituting a State without mediations.⁶⁸ Throughout his

64 Hegel, *Lectures on the Philosophy of Religion*, vol. I, p. 456.

65 Hegel, *Philosophy of History*, p. 101.

66 Hegel, *Philosophy of History*, p. 101.

67 Hegel, *Werke*, vol. VII, p. 51; vol. XII, p. 440, 555.

68 Hegel, *Werke*, vol. XII, p. 533.

lectures, Hegel would equally criticize Brahmanism and Islam,⁶⁹ situating them in a political and economic dimension analogous to Catholicism and, even Puritanism.⁷⁰ Here Hegel's critique of fanaticism, which confuses civil society and the State, has expressions in politics and religion, while, according to Hegel, modern rationality *overcomes* such fanaticism and supposedly comprehends political economy as a dimension unique to bourgeois society that globally expands *from* that historically shaped rationality.

England, according to Hegel's conceptualization, introduces in a new territory the principle of particularity (*Prinzip der Besonderheit*), expressed in the expanse of industry and the population: "In North America we witness a prosperous state of things; an increase of industry and population, civil order and firm freedom."⁷¹ South America, however, does not historically represent the principle of particularity, circumscribed to the universality of choice and influenced by the State and recognition of law, rather it represents the principle of immediate universal choice characteristic of Jacobin and Napoleonic politics: "their whole history is a continued revolution."⁷²

Within the particular limits of a national market, this logically implies that the State precedes principles of particularity, for, as we have seen, the State can only operate when the universal legality of private property is recognized and protected by law. But, within the margins of the world market, as in the case of colonial processes, States historically precede the conformation of new international bourgeois societies. This occurs because States, not bourgeois societies, represent universal principles. In the case of Spain, the State, through its civil society – by definition non-bourgeois – did not establish universal principles for any bourgeois society to emerge. While Spain was logically and historically denied a bourgeoisie, England cultivated its own. In specific cases of the systematic economic colonization of modernity, particularly represented by England, the logical

69 Hegel, *Werke*, vol. XII, p. 186, 434. Particularly, in relation to Islam in this context, refer to: L. Ventura, *Hegel in the Arab World. Modernity, Colonialism, and Freedom* (London: Palgrave Macmillan, 2018).

70 Hegel, *Werke*, vol. XII, p. 516.

71 Hegel, *The Philosophy of History*, p. 101.

72 Hegel, *The Philosophy of History*, p. 101.

principles of bourgeois society and the State differ, but their functions historically coincide.

Although this argument explains Hegel's position on bourgeois society and the State in international colonial commerce, it does not clarify whether he believed a particular State could qualitatively modify the quantitative element involved in the empirical development of the original imbalance of capital. Quite the contrary, it reaffirms the problem, for, as Hegel sustains in his characterization of the specific difference between North and South America, in the north industry (*Industrie*) and the population (*Bevölkerung*) are in consistent growth (*Zunehmen*), the same expressions that represented the consequences of the original imbalance of capital in his characterization of English society's free activity (*ungehinderter Wirksamkeit*). The problem, then, persists, and on this point Hegel's argument, apparently without modifications, intensifies its international projections of the quantitative bad infinity (*schlechte Unendlichkeit*) of national markets. If "the progress to infinity, which is accepted in so many shapes and applications as an unsurpassable ultimate at which thought, having reached this 'and so on to infinity,' has usually achieved its end," then, "the progress to infinity is therefore only repetitious monotony."⁷³ It is from this perspective that Simmel, for example, "summarizes the ratio of means to ends within the teleological chain with the help of the principle stating that the longer the chain of means leading to a particular end, the more likely it is that one of the means will itself become the ultimate goal,"⁷⁴ concluding that blind confidence in the infinite projection of quantitative multiplication would only be possible for the economy if it deliberately omitted a horizon of qualitative transformation. While Hegelian philosophy does not appear to clearly formulate this issue, it would become one of the fundamental problems of the first generation of republican and socialist Hegelians.

Politically, the forms of government do not seem to modify the problem at all. For example, although most countries in the Americas had installed republican regimes by 1820, there is a qualitative difference

73 G. W. F. Hegel, *Science of Logic* (Cambridge: Cambridge University Press, 2010), p. 113.

74 B. Kuźniarz, "Simmel and the Posthuman: Money as the God of Bad Infinity," *Polish Sociological Review*, vol. 204, no. 4 (2018), p. 457.

between the northern and southern countries in relation to the formation of their economies: some ingrained with the principle of particularity, others ingrained with a principle of dependence. For the latter, Hegel does not recognize their historical merits. But, among the countries of North America and England, he does not distinguish any qualitative differences, rather a purely quantitative one, despite the difference between their republican-presidential and monarchical-constitutional regimes, respectively. Therefore, if two essentially different forms of government recognize the same universal principle – particularity and property – their differences, according to Hegel, can only be of rank. This historically justifies that “emigrants have got rid of much that might be obstructive to their interests at home.”⁷⁵

When a nation, and thus a national market, formally gains independence – as in the case of the United States from England – commercial relations with the former metropolis are not severed, rather transformed through a continuity of their material bond. In this transformation, the original imbalance implies a competence for the position of a market in the production, consumption, distribution, and accumulation of capital, now on an international level. Hegel culminates his argumentation on this point, taking the following position: Once the world market is constituted, the relation between national markets replicates the behavior of the original imbalance of capital, not only on a quantitative plane, but also on a qualitative one. But, in what way? Quantitatively, and despite their State and government forms, the bourgeois societies of England and the United States confront the mode as individuals confront a national market, because “to know other nations,” in terms of their particularities, “is one of the most important moments in the formation of the new world.”⁷⁶ These bourgeois societies mutually depend on a universal relationship represented by the world market, in which they newly expose a consequence of the original imbalance through their specific participation in this market, thus replicating the dynamic of the multiplications of bad infinity, now

75 Hegel, *The Philosophy of History*, p. 100.

76 G. W. F. Hegel, *Philosophie des Rechts. Die Vorlesung von 1819/20* (Frankfurt am Main: Suhrkamp, 1983), p. 199.

on a global scale: thus the grand logical paradox of capital's behavior. For this reason Hegel tersely concluded the following paradox: If England systematically expands looking for new markets, and the United States historically tends to replicate this behavior, "the question now is where to find soil for colonies."⁷⁷

Ultimately, this means that, although Catholic and Protestant religions partly determine the empirical configuration of the spaces of conquest and colonization, respectively, neither one resolves the problem of the infinite repetition of the labor/capital contradiction: In other words, the impossibility of economic reconciliation intersects and transcends the debates on religious reconciliation in Hegelian philosophy. A problem that, nonetheless, politics alone cannot resolve.

4 Reinterpreting the World

In Hegel's conceptualization of political economy, the inherent tendency of bourgeois societies to colonize has an eminently logical character. By recognizing the labor/capital contradiction as the basis of differential distribution in the general wealth (*Vermögen*) of a formal national market, Hegel reflects on the variety of possible solutions to the problem of poverty, such as taxes, benefits, etc., which, regardless, are unable to subvert the behavior of contemporary societies.⁷⁸ Colonialism, in this sense, appears as an expansive need of societies in their search for new markets that, unlike Rosa Luxemburg's later hypothesis,⁷⁹ does not exclusively revert to pre-capitalist spaces, for the particular competition among bourgeois societies, codified by the law of property from the legal sphere, once again translates into a competition for participating in the distribution and accumulation of capital. Since the world is physically finite, the expansion

⁷⁷ Hegel, *Philosophie des Rechts. Die Vorlesung von 1819/20*, p. 199.

⁷⁸ M. Whitt, "The Problem of Poverty and the Limits of Freedom in Hegel's Theory of the Ethical State," *Political Theory*, vol. 41, no. 2 (April 2013), pp. 257–284.

⁷⁹ R. Luxemburg, *The Accumulation of Capital* (London: Routledge, 2003), p. 342.

of capital has empirical limits that Hegel manages to prove, even though he is unable to observe the form in which capital could adjust to itself in its qualitative dimension, becoming a logic of permanent original accumulation by dispossession.⁸⁰ Of course, Hegel could not escape his own historic time, but he did lay the bases for a radical logical lucidity in order to demonstrate the limits of capital's colonial behavior in its ambition for infinite quantitative multiplication.⁸¹

The State cannot resolve what is beyond the limits of the economy, not only because, according to Hegel's conceptualization, each operates on different levels, but also because, "If the state is confused with civil society and its determination is equated with the security and protection of property and personal freedom, *the interest of individuals* [*der Einzelnen*] *as such* becomes the ultimate end for which they are united; it also follows from this that membership of the state is an optional matter."⁸² As we have seen, this random and discretionary character is expressed in the processes of sporadic conquest and colonization, where the individual does not leave him/herself and bonds with the world through a force (*Gewalt*), "such as a patriarch or a tribal chief,"⁸³ which constitutes forms of subjectification that lack universality or, in the words of Gramsci, transfer this subjectivity: "For Catholicism, what is called 'civil society' in Hegelian language is not 'necessary'; that is, it is purely historical or contingent. In the Catholic conception, the state is just the church, and it is a universal and supernatural state."⁸⁴

However, while for Hegel, "The *element* of the *universal spirit's* existence (*Dasein*) is intuition and image in art, feeling and representational thought in religion, and pure and free thought in philosophy,"⁸⁵ and,

80 As shown by, for example, M. Perelman, *The Invention of Capitalism: Classical Political Economy and The Secret History of Primitive Accumulation* (Durham and London: Duke University Press, 2000), p. 170.

81 An impressive exercise of reading Hegel's ideas on the contemporary transformation of capital can be found in G. Mann, *In the Long Run We Are All Dead: Keynesianism, Political Economy and Revolution* (London: Verso, 2019).

82 Hegel, *Philosophy of Right*, p. 276.

83 Hegel, *Philosophy of Right*, p. 360.

84 A. Gramsci, *Prison Notebooks*, vol. III (New York: Columbia University Press, 2007), p. 21.

85 Hegel, *Philosophy of Right*, p. 372.

understanding that art fulfills specific functions in the conformation of modernity's ethical bond,⁸⁶ it seems not to fulfill any specific function in the conformation of modern colonial spaces, as it did, for example, in Greek expansion through mythology.⁸⁷ We believe Hegel ignores this dimension, overlooking the concrete functions that literary stories and new republican iconography fulfilled in all the independence processes of the Americas.

Although one can find points of coincidence (and difference) between the positions taken by Hegel, Weber, and Troeltsch, what we have attempted to show here is how religion operates in the conformation of conquered and colonized spaces, beyond the problem of the Protestant origins of capitalist subjectivity. While Protestant individuality, understood as self-conscious self-determination, is at the foundation of the principle of possession in its conformity with the law as recognition of modern private property,⁸⁸ the function of religion that we have sought to highlight stems into the processes of shaping colonial organization, both as colonial spaces and as incipient independent States – that is, when art, religion, and philosophy coincide in developing self-consciousness. For Hegel, this happens because “The present has cast off its barbarism and unjust [*unrechtlche*] arbitrariness, and truth has cast off its otherworldliness and contingent force, so that the true reconciliation, which reveals the *state* as the image and actuality of reason, has become objective,”⁸⁹ which ultimately assumes a

86 E. Rózsa, “Individualitätstypen in der modernen Kunst: Christus, der Ritter, der «rechtschaffene Bürger» im Blick auf das Ende der Kunst als ihren «Anfang» bei Hegel,” in A. Gethmann-Siefert, H. Nagl-Docekal, E. Rózsa and E. Weisser-Lohmann (eds), *Hegels Ästhetik als Theorie der Moderne* (Berlin: Akademie Verlag, 2013), pp. 85–108 and E. Weisser-Lohmann, “Sittlichkeit, Epos und Tragödie – Hegel und die Rolle der Kunst im modernen Staat,” in Gethmann-Siefert, Nagl-Docekal, Rózsa and Weisser-Lehmann (eds), *Hegels Ästhetik als Theorie der Moderne*, pp. 165–176.

87 G. W. F. Hegel, *Lectures on Fine Art* (Oxford: Oxford University Press, 1988), p. 493.

88 E. Rózsa, “‘Glaube im Gefühl.’ Hegels Auffassung der subjektiven Religiosität in Bezug auf die Selbstdeutung und Selbstbestimmung des modernen Individuums,” in H. Nagl-Docekal, W. Kaltenbacher and L. Nagl (eds), *Viele Religionen – eine Vernunft? Ein Disput zu Hegel* (Berlin: Akademie Verlag, 2008), p. 138.

89 Hegel, *Philosophy of Right*, p. 380.

judicative character in the representation of the present, but not necessarily a normative character. Philosophy cannot omit or suspend its judgments on the present or reality, although it should seek a position of “edification” in which “the ‘beautiful’, the ‘holy’, the ‘eternal’, ‘religion’, and ‘love’ are the bait required to arouse the desire to bite,” where “not the Notion, but ecstasy, not the cold march of necessity in the thing itself, but the ferment of enthusiasm [*Begeisterung*], these are supposed to be what sustains and continually extends the wealth of substance.”⁹⁰

Hegel’s critique of the political economy of colonialism is not a critique of political economy in the way it would later be developed by Ricardian socialism and classical Marxism, nor is his critique of religion analogous to the critiques put forward by the *Junghegelianer*. First of all, the critiques cannot be the same because political economy corresponds to the realm of understanding and the philosophy of reason, so that, “Whatever is by nature contingent is subject to contingencies, and this fate is therefore itself a necessity – just as, in all such cases, philosophy and the concept overcome the point of view of mere contingency and recognize it as a *semblance* whose essence is necessity.”⁹¹ Second of all, classical Marxism’s critique assumed a complex, dialectic-driven analysis – but not speculative – of capital as a social relation without necessarily considering other aspects of reality.⁹² In Hegel, this reality, even absorbed by capital or the labor/capital contradiction, cannot be reduced to its economic dimension, for which his conceptualization of religion, for example, cannot remain obsolete as long as it continues to exist as a moment of subjectification.

This leads us to the problem of the *Junghegelianer*, who, with different arguments based on their own confidence (*Zutrauen*) and enthusiasm

90 G. W. F. Hegel, *Phenomenology of Spirit* (Oxford: Oxford University Press, 1977), p. 5.

91 Hegel, *Philosophy of Right*, p. 361.

92 Of course, the extensive and variable history of Marxism is irreducible to this aspect, but we rely on the *locus communis* from the II International, which saw a remnant of idealist mysticism in Hegelian philosophy of religion: “Hegel is often to be found – about God, religion, morality in general – extremely trite idealistic nonsense.” V. Lenin, *Collected Works*, vol. XXXVIII (Moscow: Progress Publishers, 1976), p. 307.

(*Begeisterung*) – we could say, using Hegel’s own words – assumed a kind of superiority in their critique of religion, which derived in the need for a critique of economy and politics. Although justifiably due to his own pretensions, when Marx avowed that, “for Germany, the critique of religion is essentially completed; and the critique of religion is the prerequisite of every critique,”⁹³ he ignored the speculative character of Hegelian dialectic in which the denied object does not disappear, rather it institutes the configuration of a new reality. In other words, the Hegelian problem in this specific aspect of his presentation turns into the way religions acquire a possible new sense in their specific bond with capitalist modernity.

The radical core of Hegelian criticism thus stems into attempting to comprehend the present beyond the singularity of representations – that is, beyond particular political, economic, religious, and moral positions. Not to justify or hypostasize the *form* of the present, rather to substantiate it – understanding substantiation as the speculative process of conceptualizing the variable contradiction of reality’s logical and historical behavior. Political economy cannot fulfill this task; politics, as a practical intervention over reality, cannot solve this alone; and religion, even at its most abstract point, cannot grasp a conceptually speculative dimension.⁹⁴

When Gramsci said that “Hegel’s conception belongs to a period in which the spreading development of the bourgeoisie could seem limitless, so that its ethnicity or universality could be asserted: all mankind will be bourgeois,”⁹⁵ he exaggerated, on the one hand, Hegel’s confidence in the unlimited character of expansion and, on the other, the sense that the bourgeoisie could have of a critical conceptualization of colonialism. As the basis of colonial expansion, Hegel managed to see how the universality of bourgeois society was unsparing, all the while lucidly attending to the way in which the contradictions of these particular societies would logically replicate on a global scale. However, although we have only attempted to show one aspect of the function of religion in the configuration of this tendency toward globalism, the philosophical exercise would necessarily

93 K. Marx, *Critique of Hegel’s ‘Philosophy of Right’* (Cambridge: Cambridge University Press, 2009), p. 131.

94 Hegel, *Lectures on the Philosophy of Religion*, vol. III, p. 157.

95 A. Gramsci, *Prison Notebooks*, p. 338.

have to be completed with the inclusion of critical perspectives of subaltern and decolonial studies, feminist perspectives, and Latin American studies, in order to comprehend the extensive variables that form the particularized behavior of capital in spaces where its contradictions flourish, both on a historic and contemporary level. This would be, from a Hegelian perspective, our philosophical responsibility for the present.

7 Just Aspirations and Philosophical Method

Egalitarian Critiques of Hegel's Concept of Civil Society

Without injustices, the name of justice would mean what?

– Heraclitus¹

1 Introduction

Two recent egalitarian critiques of Hegel's political philosophy bemoan its alleged inability to sufficiently deal with poverty and socio-economic inequalities but imply profoundly different methods of philosophy than their target. Jean-Francois Kervégan argues that Hegel's reliance on out-dated metaphysical convictions entails that his political philosophy fails to reconcile his contemporary readers with the perceived shortcomings of his description of an ideal civil society. Meanwhile, Frank Ruda takes Hegel's account of the rich and poor "rabble"² to constitute evidence for the failure of Hegel's philosophical notion of civil society and his method.

However, the methodological differences between Hegel and his critics complicate a direct comparison, as the notion of successful critique seems to

1 Heraclitus, Fragment 60 in *Fragments: The Collected Wisdom of Heraclitus*, translated by Brooks Haxton (New York: Viking/Penguin Press, 2001).

2 F. Ruda, *Hegel's Rabble: An Investigation into Hegel's Philosophy of Right* (London: Continuum, 2011), p. 4.

rely on a common commitment to the kind of truth that philosophy aims to express or must include an immanent critique of the target's method. Otherwise, the disagreeing parties end up accusing each other of begging the question. To enable a judgment about which philosophical truth and method are preferable in cases of disagreement, a meta-philosophical criterion is required. While Hegel offers such a criterion in form of his account of absolute *Geist*'s "philosophy" as unconditioned truth's self-thinking³ and seeks to justify it via systematic *reducciones ad absurdum* of its alternatives, his critics avoid engaging in such systematic meta-philosophical argumentation.

However, even if one assumes that all disagreeing parties are committed to the discovery and description of the same unconditioned truth, the question arises how to decide who best achieves this. While Hegel offers an argument based on concept-metaphysics, according to which those thinkers are philosophically correct who adequately participate in and actively enable truth's self-thinking, this does not eliminate the possibility of error about unconditioned truth on the part of empirically situated, finite thinkers, such as Hegel himself. Hegel's only answer to this problem seems to be that as soon as a finite thinker thinks unconditioned truth philosophically, the perspective of truth falls together with the perspective of the thinker. This undermines the actuality of error as well as the need for doubt and skeptical challenge: doubting the truth would be just as philosophically counterproductive as dogmatically asserting it. This also entails that whether unconditioned truth's standard is met by Hegel's own philosophical claims can only be decided by thinkers who choose to actively participate in truth's self-comprehension. Whether this is the case with his egalitarian critics can be proven philosophically by immanently refuting Hegel's method or deductions.

The discussion will proceed in three steps. The first part examines J. F. Kervégan's argument that Hegel's account of objective *Geist* fails to reconcile contemporary thinkers before examining Hegel's metaphysically based reasoning for his account of civil society. Part two discusses Frank

3 G. W. F. Hegel, *Philosophy of Mind*, trans. by W. Wallace and A. V. Miller, rev. & intro. M. Inwood (Oxford: Clarendon Press, 2007), p. 276.

Ruda's charges that Hegel's inability to deal with the rabble undermines his account of a rational civil society and that politics condition philosophy. This leads into the third part's discussion of Hegel's account of the relationship between philosophical thinker and unconditioned truth.

2 Part I: The Two Critiques

2.1 *J. F. Kervégan: Poverty and Reconciliation*

Jean François Kervégan argues in his influential study of Hegel's political philosophy, entitled *The Actual and the Rational: Hegel and Objective Spirit*, that Hegel's account of right (i.e., objective spirit (*Geist*)) and thus of abstract right, morality and family-, civil society-, and state-based sociopolitical life⁴ describes the rational, normative and metaphysically grounded principles that shape empirical world's societies' "actuality."⁵ As rational thinkers and agents, we should continuously strive for realizing right's demands and maintain an ethos and behavioral patterns that support its continued influence. On Kervégan's reading, Hegel's account of right aims to define the best possible arrangement of human affairs and the purpose of history, showing what it means to be as good as it sociopolitically gets for us and all future rational beings⁶ However, Kervégan also argues that Hegel's account of right is too "optimistic,"⁷ as it relies on a faith in metaphysics and absolute spirit, believing that the problems of civil society, such as poverty, will be solved over time. Since we cannot share Hegel's faith in metaphysics and absolute spirit, his account falls short of enabling reconciliation for us.

4 J. F. Kervégan, *The Actual and the Rational: Hegel and Objective Spirit* (Chicago, IL: University of Chicago Press, 2018), pp. xiv ff.

5 Kervégan, *Actual and Rational*, p. 199.

6 Kervégan, *Actual and Rational*, p. 12.

7 Kervégan, *Actual and Rational*, p. xv.

To Kervégan, the shortcomings of Hegel's account of right and the capitalist world in general are especially obvious in the treatment of the modern market economy's problems of poverty and inequality: not even in Hegel's ideal civil society, corporations and state policies are able to avoid the lack of minimally required material means for some of its members, thus creating a poor underclass, and some considerable material inequality encourages colonization and the exodus of some of society's poor.⁸ It also motivates further domestic and externally oriented policy actions by the state, such as anti-poverty measures, the opening and closing of national borders, imperialism, the engagement in temporary political and trade-based agreements, trade-wars, and political and military conflicts. Insofar as these go beyond the confines of the particular state, Kervégan's Hegel describes these as internal aspects of what he labels the singular world spirit (*Weltgeist*),⁹ so that everything that politically and historically takes place in the world is ultimately an expression of *Weltgeist*. Given *Weltgeist*'s striving for ever greater freedom, Hegel thus seems to suggest that we should be reconciled with the inequalities within states and conflicts and wars between them, as they serve the purpose of *Weltgeist*'s development. However, according to Kervégan, also the category of *Weltgeist* fails to reconcile Hegel's contemporary readers, as these remain unconvinced that metaphysico-philosophical justification can appease us at all anymore. Suitably critical readers of Hegel will thus refuse the notion that a world filled with poverty, inequality, war, and conflict is one they ought to accept as most rational and that will improve given enough time.¹⁰

2.1.1 Hegel's Concept-Based Account of Right

One may wonder: If a reconciliation between the philosopher and the world is one of the main goals Hegel wants his philosophy to achieve, what motivates him to describe right and *Weltgeist* in such a seemingly less than ideal manner? Is Hegel's analysis of right simply pessimistic about humanity's ability to fairly distribute wealth, even in the best of

8 Kervégan, *Actual and Rational*, p. 202.

9 Kervégan, *Actual and Rational*, p. 53.

10 Kervégan, *Actual and Rational*, p. 204ff.

all sociopolitical worlds? However, it seems that Hegel would reject the perspective from which such questions are asked, arguing that it implies an abstract and one-sided notion of right that contradicts his own, metaphysically grounded account.¹¹ In apparent opposition to Kervégan's reading, according to which metaphysics and philosophy serve to gloss over or belittle the role of inequality and poverty in right, Hegel argues that these are part of right in virtue of its metaphysical grounding.¹² To Hegel, one is not reconciled with poverty and inequality because one is told that these will be solved someday, but one is reconciled with them because one comprehends these to be an inevitable aspect of the metaphysically grounded idea of right.

What are Hegel's metaphysical reasons for describing right in this manner? In line with his systematic ambitions,¹³ Hegel's metaphysical reasons originate in his metaphysics of "the concept."¹⁴ According to this most fundamental, logico-metaphysical principle, the moments of universality and particularity are united within individuality in such a manner that each moment retains its distinct, irreducible character, while remaining compatible with the other moment.¹⁵ However, the path to individuality begins with universality and leads through its twofold self-negation: universality negates itself to define particularity which is negated once more to become individuality, revealing in the process that universality can only be what it is because of particularity as its opposite and individuality as the truth that it is an aspect of.¹⁶ Defining Hegel's method of philosophical deduction and his manner of connecting the categorial determinations of what he takes to be unconditioned truth, the logico-metaphysical concept is shown to turn itself into "the idea"¹⁷ by uniting itself with its self-positing

11 G. W. F. Hegel, *Outlines of the Philosophy of Right*, ed. S. Houlgate, trans. by T. M. Knox (Oxford: Oxford University Press, 2008), p. 15.

12 Hegel, *Right*, p. 19.

13 G. W. F. Hegel, *Encyclopedia of the Philosophical Sciences in Basic Outline Part I: Science of Logic*, ed. and trans. by K. Brinkmann and D. O. Dahlstrom (Cambridge: Cambridge University Press, 2010), p. 5.

14 Hegel, *Right*, p. 17.

15 Hegel, *Encyclopedia I*, p. 233.

16 Hegel, *Encyclopedia I*, pp. 236–238.

17 Hegel, *Encyclopedia I*, p. 282.

objectivity,¹⁸ ultimately defining the “absolute” idea.¹⁹ The absolute idea then negates itself to define nature and negates nature to define *Geist*,²⁰ which defines “objective [*Geist*]”²¹ as the equivalent of “right.”²² More precisely, right’s categorial determinations are shown to result from the self-development of the *Geist*-based “concept of the will” that turns itself into the “idea of right.”²³ For example, abstract right with its institutions of personhood, property, contract, and wrong (i.e., crime) is the first and immediate, abstractly universal form that the concept of the will is argued to give itself, thus attempting to define and philosophically justify these determinations as being parts of the philosophical truth about sociopolitical reality.²⁴ Morality is the concept of the will’s second, particularity-, mediation-, and reflection-articulating moment and finally, ethical life with its institutions of family, civil society, and state is the concept of the will’s final, individuality-representing determination in which the previous determinations are sublated so that all aspects of sociopolitical ideality are immediate and mediated at once:²⁵ within ethical life, abstract right and morality are irreducibly what they are and can thus not be explained with reference to higher-order principles. At the same time, they are what they are in contrast to the other determinations: abstract right and its immediacy is “not morality’s mediation,” while ethical life is defined by immediacy and mediation. The same applies to the moments of the concept of ethical life, that is to the family, civil society, and state.

The institutional architecture of right thus takes its cue from the dialectic of the concept of the will, which is based on the logical concept and its method of self-negation toward ever more concreteness. Where the first moment of logical universality defines identity, self-reference, and thus self-sufficiency, universality’s negation of particularity represents

18 Hegel, *Encyclopedia I*, p. 268.

19 Hegel, *Encyclopedia I*, p. 299.

20 Hegel, *Encyclopedia I*, p. 46.

21 Hegel, *Mind*, p. 172.

22 Hegel, *Mind*, pp. 214 ff.

23 Hegel, *Right*, pp. 50 ff.

24 Hegel, *Right*, pp. 50 ff.

25 Hegel, *Right*, p. 50.

separation, diversity, disjunction, conflict, and plurality.²⁶ In the context of right, the immediate self-identity of the agent and good in abstract right is broken up in morality, where a reflecting agent differs from the abstract good before agent and good are reunited in ethical life so that agents live and embody ethical virtue.²⁷ And within ethical life, the immediate unity of the family is broken up into the plurality and alienation of self-interest-oriented agents in civil society before being accommodated in the unity of the state's powers.²⁸

As is the case with the logical concept's determinations, the institutions of ethical life retain their irreducibility within ethical life's highest determination of the state despite their ascending order of concreteness: the particular institution of the family should thus not be dissolved in civil society or in the state, for example, by forcibly separating family members or raising the children exclusively in state- or privately owned facilities. Similarly, the particular institution of civil society cannot be dissolved by the state in the sense that the state runs the economy without any meaningful freedom being enjoyed by the particular individual members of the estates.²⁹ Nor should the state be overtaken by civil society's private interests or family interest so that inherently public functions are formed and realized by private entities, such as private companies or public offices are controlled by one or a variety of families.

2.1.2 Civil Society and Particularity

Within the concept of ethical life, the moment of civil society³⁰ represents the metaphysical concept's moment of particularity and determines particularity, mediation, and appearance in several ways: each individual citizen must be allowed to define, refine, and exercise her or his specific talents, a unique notion of tailored self-realization and fulfill her or his needs, pursuing corresponding moral and legal ends and

26 Hegel, *Encyclopedia I*, pp. 238ff.

27 Hegel, *Right*, pp. 50–51.

28 Hegel, *Right*, p. 162.

29 Hegel, *Right*, p. 193.

30 Hegel, *Right*, pp. 179, 180.

interests within the economy and private life. This includes the taking of emotional, psychological, economic, social, educational, and professional risks that might entail the increase or loss of status and wealth within a market economy.³¹ The resulting distribution of wealth and poverty is state-guided through a legal framework, including taxation-based redistribution, charity measures, policing, and the work of collective interest-pursuing corporations:

Poverty and, in general, the distress of every kind to which every individual is exposed, even in his natural environment, has a subjective side which demands similarly subjective aid, arising both from the special circumstances of a particular case and also from love and sympathy [...]. Casual almsgiving and casual endowments, e.g. for the burning of lamps before holy images, etc., are supplemented by public poor-houses, hospitals, street-lighting, and so forth. There is still quite enough left over and above these things for charity to do on its own account.³²

However, despite their best efforts, public and private anti-poverty measures will not manage to entirely eradicate poverty, which has its roots in chance, the contingency and arbitrariness accompanying the pursuit of particular desire and need and has structural causes in the ever greater technology-induced capacity for overproduction and the resulting undermining of the need for some individual labor: some citizens will not be able to successfully sell their skillset on the market, become unemployed and fall into poverty in an economy that inevitably produces more than is consumed. Hegel thinks that fighting the resulting poverty by redistributing assets from the wealthy to the poor and by state-funded labor initiatives can only go so far as these measures contradict the notion of the citizens' ability to ensure their own economic well-being.³³ Ultimately, the resulting poverty can only be partly and temporarily offset by still giving the unemployed work to then export the overproduced goods abroad and by colonization, which entail disadvantages for other importing, internationally competing, collaborating, and trading states.³⁴

31 Hegel, *Right*, pp.190 ff.

32 Hegel, *Right*, p. 220.

33 Hegel, *Right*, p. 222.

34 Hegel, *Right*, pp. 223–224.

A rational civil society thus retains a degree of contingency and arbitrariness: Particular agents and collective entities compete for the same resources, status, and access to revenue within the market economy and are affected by the effects of birth, family constitution, upbringing, motivation, presence and absence of talents, psychology, career choice, education, connections, economic social preference, national and international economic fashion, demand, inventions, resource related events, etc. It is thus an interplay of particular choice and chance created and experienced by a variety of agents within a legal and institutional framework that renders some wealthy and some poor.³⁵

This renders poverty an inevitable aspect of a particularity-enabling and particularity-releasing civil society, which is nevertheless the only kind that Hegel thinks lives up to warranted metaphysical requirements. This also entails that in a more strictly controlled economy – Hegel mentions Plato’s republic as an example but the same seems to be valid for modern collectivism³⁶ – where the state avoids the excesses of particularity-caused wealth or poverty either through redistribution or a design of the economy that does not give particularity, individual choice, and chance its due, decadence and self-destruction ensue due to inefficiency, stagnation, lack of competitiveness, and long-term popular and institutional support.³⁷

Within civil society, poverty and inequality are thus the negation of the universality-embodiment, rational standard that is a sufficiently and relatively affluent member of civil society: the universal purpose of a functioning market economy is the production of adequate collective and individual wealth to enable the satisfaction of citizens’ “needs, desires, willfulness”³⁸ (*Willkür*) and their self-realization so that they can engage in a line of work that sufficiently corresponds to their particular talents, preferences, and motivation while earning a sufficient amount of wealth.³⁹ Insofar as there is a limited amount of wealth created and the particular citizens will need a comparable amount of wealth to be functioning and integrated members

35 Hegel, *Right*, p. 219.

36 Hegel, *Right*, p. 182.

37 *Ibid.*

38 *Ibid.*

39 Hegel, *Right*, p. 190.

of the family, civil society, and state, universality demands a relatively equal distribution. This universal goal conflicts with the particularity of citizens and the particularity of their relative wealth: the universal notion of wealth-equality that is based on citizens' equal status as persons, as moral agents and as citizens is contradicted by its negation in form of the citizens' particular needs, abilities, aspirations, and chance.

However, civil society structurally prioritizes particularity over universality in the sense that economically equalizing measures by state and civil society are logically *after* and thus in the service of the prioritized particularity of interest, need, ability, chance, and willfulness.⁴⁰ In civil society citizens are first particular and then universal, so that universality appears as a limitation of particularity and the best citizens can do is to do what universality says they must (e.g., to develop, work, and accumulate wealth) in order to realize their particularity. From this perspective, the universal necessity of law and universality-oriented equalization including its coercion is thus perceived as a constraint on and a modification of the prioritized particular interest.⁴¹

Like right's other moments of abstract right, morality, and ethical life, civil society thus implies the negations of its positive determinations. In abstract right, the rational standard of personhood, property, and contract implies the seemingly non-rational negation that is wrong or crime.⁴² In morality, good-oriented actions imply the negation of "evil."⁴³ And the moments of ethical life also each imply their own seemingly irrational negation: the family's unity implies its own dissolution via the departure of the children and the death of its members. Meanwhile, the state's particularity implies conflict and war with other states and power-organizing entities.⁴⁴ In this general manner motivated by self-negation, civil society's implicit standards are accompanied by their own negation: the individual-interest driven particularity of the market economy in the system of needs entails that not all needs will be met.⁴⁵ The administration of justice will

40 Hegel, *Right*, p. 184.

41 Hegel, *Right*, p. 184.

42 Hegel, *Right*, p. 96.

43 Hegel, *Right*, p. 151.

44 Hegel, *Right*, p. 310.

45 Hegel, *Right*, p. 196.

be imperfect and crime will persist,⁴⁶ the police and corporation will fail to offset the harm inflicted by the often arbitrary and contingent effects that the market economy, chance, and false decisions have on individuals' lives and their property.⁴⁷ The universality-defined moments of individual and collective wealth creation and a relative economic equality of ethical citizens imply their negation in the form of wealth-destruction, poverty, and inequality.⁴⁸

2.1.3 Comprehension of Civil Society and Abstract Representation

Given the concept-based, mutual implications of the moments' positive and negative dimensions,⁴⁹ demanding a crimeless rule of law, a family that never dissolves, moral subjects who never commit evil deeds or a state that lives in perpetual harmony with other states would be the mark of what Hegel might call one-sided and thus abstract or representational thinking. It would amount to positing the universal dimensions absolute without taking the particularity-based, metaphysically required negation into account.⁵⁰ In the case of civil society, this entails that the representation of a perfectly egalitarian, crime- and corruption free, wealth equalizing and at the same time particularity-encouraging and -embodying market economy without inequality and poverty must remain an abstract, universality-focused possibility that falls short of actuality. Such an ideal attempts to separate the benefits of a modern civil society from its ontologically inevitable negation and disadvantages.⁵¹

From a praxis-focused point of view, Hegel would argue that similar to the attitude of the beautiful soul,⁵² who wants only the good and attempts to avoid the bad entirely and thus renders itself powerless and incapable of

46 Hegel, *Right*, pp. 213 ff.

47 Hegel, *Right*, p. 227.

48 Hegel, *Right*, p. 221.

49 Hegel, *Right*, p. 31.

50 Hegel, *Encyclopedia I*, p. 239.

51 Hegel, *Right*, p. 220.

52 G. W. F. Hegel, *The Phenomenology of Mind*, trans., intro., comment by M. Inwood (Oxford: Oxford University Press, 2018), pp. 262 ff.

acting, those who demand exclusively positive social institutions do not only think abstractly but run the danger of not being able to effectively deal with the inevitably arising negations of their positive representations. Without an adequate comprehension of the speculative relationship between wealth and poverty and equality and inequality, anti-poverty and anti-inequality measures are likely to be ill-designed and ineffective and might well entail a distribution of wealth that is even further from the intended, one-sided ideal. Meanwhile, from the purely logical point of view, demanding a poverty-, inequality-, and alienation-free modern civil society that includes a particularity-accommodating market economy would amount to reducing the logical concept to its moment of universality without always already uniting it with particularity in individuality.⁵³

However, this does not entail that Hegel thinks that right's negative dimensions of crime, evil and family dissolution, inequality, poverty, decadence and corruption, and war are equally important as right's positive dimensions of personhood, property, contract, moral actions, a harmonious family, relative equality of wealth, and a functioning state. Instead, while the negations are conceptually necessary for right's positive determinations, the negations play the role of inspiring the protection, refinement, and evolution of the positive dimensions. The existence of crime thus inspires the ever more refined definition and protection of personhood, property, and contract. The possibility and many forms of evil motivate ever more subtle and learned moral deliberation, while the challenges to harmonious family life, wealth creation and distribution, and the state's proper functioning and peaceful existence inspire ever more informed protective and positivity-incentivizing measures.

This entails that rejecting the positive because of the negative that accompanies it would contradict conceptual truth and thus betray a lack of appreciation of the positive. And while the positive moment would not be determined as what it is without the negative, the positive moment remains the dominant force: its creation of and productive conflict with its self-positing negation is a sign of its health,⁵⁴ as without negation there is

53 Hegel, *Encyclopedia I*, p. 236.

54 Hegel, *Right*, p. 182.

nothing to challenge, inspire, and spur on the positive.⁵⁵ However, as soon as the moments' negations empirically gain ground against their positive counterparts, societies are in a state of irrationality and decay. In the context of civil society, this entails that while the consistent striving for and realization of wealth creation and its relatively equal distribution needs poverty and inequality as opposing forces to be able to exist and flourish, wealth and relative equality must domineer over poverty and inequality if a society is to qualify as rational.⁵⁶

2.1.4 Negation and Reconciliation

What does this entail regarding Kervégan's reservations about the ability of Hegel's philosophy to reconcile contemporary thinkers with modern sociopolitical reality? Hegel would argue that insofar as he managed to express the truth about right and our societies embody it, they can be comprehended with the concepts he provides and thus reconcile thinkers with the negative aspects they encounter in principle. The comprehension of a modern state and its civil society thus implies the acceptance of some poverty and inequality as necessary and inevitable negations of the relative wealth and equality that should define the lives of the majority of the citizens.⁵⁷ While this does not affect the empirical battle against inequality and poverty, it enables the design of better anti-poverty and anti-inequality measures. In contrast, if one rejects Hegel's argument for the concept-based inevitability of some poverty and inequality from a representation-based, possibility-focused egalitarian point of view that demands the complete abolishment of poverty and inequality, one will not be reconciled with poverty's and inequality's existence. Without an appreciation of the roots of Hegel's account of civil society within the logical concept, one might be more likely to prefer the abstraction of a poverty-free and egalitarian society over Hegel's account and consequently not be reconciled by his analysis.

⁵⁵ Hegel, *Right*, p. 316.

⁵⁶ *Ibid.*

⁵⁷ Hegel, *Right*, p. 218.

While such intolerance of any poverty and inequality might be a necessary attitude for some agents to have, for example, for those who intensely pursue social change in their private and public lives, it would not be conceptually based on Hegel's method: to him, philosophically informed, equality-oriented citizens know that their actions will never entirely eradicate some poverty and inequalities within a modern civil society, and yet, they continue to work for relative equality and against poverty, thus defending and strengthening civil society's positive core. Hegel's conceptually informed agents fight inequality and poverty to prevent them from unduly undermining the relative equality and wealth that is an inevitable part of a functioning civil society.

In any case, Hegel argues that philosophical comprehension does not reconcile thinkers with a given, potentially ideologically tainted description of a representation that a thinker presents as the unconditioned truth of objective *Geist*. Instead, he defines rational reconciliation as an effect of a philosophical comprehension of the idea of right and its actuality, including the realization that reality is indeed structured by and in service of it.⁵⁸ This extends to reality insofar as it embodies the actuality of right and thus lives up to its demands. And while crime, evil, family disintegration, wealth inequality, state corruption, and war might be comprehended as inevitable companions of right's positive manifestations, philosophically informed thinkers will not be reconciled with their excess.

While right as objective *Geist* thus constitutes the truth of the universal, concept-grounded metaphysical principle of *Geist* in objective form,⁵⁹ its task as right is not to reconcile rational individuals with reality in the way successful philosophy achieves. Instead, right is *Geist* that is not entirely adequate to *Geist's* free nature and thus fails to embody *Geist* as it truly is: according to Hegel, right's objectivity lacks absolute *Geist's* self-referentiality and thus freedom.⁶⁰ Still, right remains the best one can expect from this deficient, yet rational objective configuration. Meanwhile, it is the philosophical comprehension and description of unconditioned truth,

58 Hegel, *Right*, p. 15.

59 Hegel, *Mind*, p. 20.

60 *Ibid.*

and thus of philosophy itself, that Hegel's account of right forms a part of and that reconciles the thinker with the sociopolitical world's rational aspects. Only philosophy and not objective *Geist* as objective *Geist* can thus reconcile thinkers in the manner Hegel associates with a philosophical comprehension of reality. To the degree that Hegel succeeds with his philosophical description of objective *Geist*'s true nature, his claims should reconcile contemporary thinkers with right's presence in their world. At the same time, if Hegel has failed to relate right's truth, his account must be corrected to enable reconciliation for those who comprehend the true philosophical account of right.

However, professor Kervégan has reservations about Hegel's project's compatibility with our contemporary way of thinking:

[W]e probably must renounce what was perhaps for Hegel himself a purely metaphysical conviction: faith in a "true reconciliation that has become objective" woven into the fabric of the human world. No doubt in doing so we sacrifice what is most ambitious in Hegel's metaphysics – that which, from his point of view, guarantees the "positively rational" coherence of the system: not only the doctrine of absolute spirit but also a significant part of the teaching of the *Logic*. It seems to me that this sacrifice is necessary because of what we are and what our world is: we no longer live up to the heights of absolute spirit. But to pronounce this diagnosis is still to be Hegelian in a certain way, by accepting the congruence of the rational and the actual.⁶¹

While Hegel would define his own mental attitude toward the existence of the concept and its systematic, categorical determinations that include civil society as (philosophical) knowledge and not as (religious) faith, Kervégan's broader point seems to be that engaging in the very metaphysically informed, philosophical project that is grounded in concept-metaphysics and that aspires to describe unconditioned truth is anachronistic, because contemporary thinkers are not willing to or capable of proper philosophical thought and the reconciliation that it affords with rational aspects of empirical reality. Kervégan thus seems to acknowledge Hegel's metaphysical ambitions as well as his reconciliation-related definition of philosophy but at the same time rejects the notion that we can engage in such philosophy today.

61 Kervégan, *Actual and Rational*, pp. xv–xvi.

This raises the question what else contemporary philosophers are engaging in if not in metaphysics and the philosophical thinking of unconditioned truth and whether – should Kervégan be correct about our lack of metaphysical ability in Hegel’s sense – this poses a problem for philosophy or for us (or for neither or both). As will be shown, Hegel argues that engaging in philosophy’s unconditioned truth is in principle possible for all mind-possessioning being at all times and places as, by definition, philosophy reports on metaphysically grounded and systematically presented, unconditioned truth. It is this notion of philosophy that puts Hegel at odds with a second critic.

2.2 *Frank Ruda: Rabble and Politics*

In his much-discussed book *Hegel’s Rabble*⁶² Frank Ruda rejects Hegel’s account of civil society on the grounds that it cannot conceptualize an ideal society without large inequalities in social status and wealth, justifying the existence of a decadent and an impoverished “rabble”⁶³ both consisting of individual citizens that fall out of the ethical order because of their lack or excess of wealth.⁶⁴ Ruda finds Hegel’s suggestion that a rabble exists even in the best of all sociopolitical worlds unacceptable and seems to argue from a perspective that implies a larger degree of socio-economic equality amongst society’s members than Hegel allows for, one where everyone is within the fold of ethical substance if not as socio-economically equal as practically possible.⁶⁵ By criticizing Hegel’s account of right, Ruda commits to the notion that his own knowledge claims about sociopolitical normativity can be compared to and are superior to Hegel’s, which in turn raises the question of how to evaluate the relative validity of the thinkers’ clashing ideals.

62 Ruda, *Rabble*.

63 Ruda, *Rabble*, p. 4.

64 Ruda, *Rabble*, p. 37.

65 Ruda, *Rabble*, pp. 106 ff.

3 Part II: Competing Notions of Philosophy

This is rendered somewhat difficult by the fact that Ruda seems to champion a different notion of philosophical knowledge and method than Hegel. While Hegel argues that his account of concept-based right articulates universal and unconditioned truth's self-articulation,⁶⁶ Ruda maintains that philosophical thought depends on empirical, historically manifest political conditions⁶⁷ and that Hegel's political philosophy was limited by the historical absence of a proletarian class.⁶⁸ Ruda thus denies that he is advancing a philosophical argument about the unconditioned conceptual normativity of the modern state in Hegel's sense. Instead, Ruda's grounds for judging Hegel's account to be a failure are what he calls philosophy-disrupting "politics":

But if politics is not to be made into a philosophical category whose stability, objectivity and invariance one presupposes, then here one encounters a possible perspective on what a non-philosophical politics could be. Politics as a non-philosophical domain would then be the site of a subject and the place of a transformation which could not easily be fitted into philosophical categories of stability, possibility, change, and so on. Politics would rather be something that was able to trouble philosophy and to confront it with exigencies which would demand a transformation of philosophy itself. *Politics would then be a condition of philosophy.* [...] Politics would rather be something that was able to trouble philosophy and to confront it with exigencies, which would demand a transformation of philosophy itself. [...] It will have to be shown that the "appearance" of the rabble in Hegel's philosophy is not a problem of philosophy and within philosophy but a problem with something other than philosophy: a problem with politics. [...] The assumption of [my critique of Hegel] is thus that the transformation of [Hegel's] philosophy introduced by Marx starts from the rabble. The way of the fundamental restructuring of philosophy begins with the rabble.⁶⁹

66 "The subject-matter of the philosophical science of right is the *Idea* [*Idee*] of right, i.e. the concept of right together with the actualization of that concept." Hegel, *Right*, p. 17.

67 Ruda, *Rabble*, pp. 3 ff.

68 Ruda, *Rabble*, pp. 5 ff.

69 Ruda, *Rabble*, pp. 2–4, italics added.

More specifically, Ruda thinks of Hegel's argument as being indebted to the historically manifest, bourgeois ideologies of the Reformation and the French Revolution,⁷⁰ while Ruda's own argument is motivated by the emergence of the proletariat as a self-conscious class out of the poor rabble and in rejection of the rich rabble. In both cases, Ruda makes the validity of Hegel's and his own arguments depend on historical, political conditions and can thus be accused of or praised for refusing to meet Hegel on his own methodological grounds, according to which philosophy is a description of unconditioned truth.

Given this difference in philosophical aspirations between the authors, one may wonder how Hegel argues for the superiority of his own concept of philosophy's method. According to the arguments he advances in the *Encyclopedia*, he thinks that only philosophy's unconditioned knowledge can avoid infinite regress and dogmatism.⁷¹ Unless knowledge is unconditioned or self-grounding, every condition or ground that a knowledge claim appeals to demands a further ground or condition for its justification, thus leading into an infinite regress. Philosophical thought thus has to be its own criterion,⁷² as no thought-external condition is able to avoid regress. Ultimately, Hegel thus defines philosophy as the unconditioned truth of *Geist* that comprehends itself and thus as absolute, that is, self-referring *Geist*.⁷³ Here both the subject and object of philosophy are the same unconditioned and thus error- and doubt-free truth.⁷⁴

From this perspective, positing politics as a final justificatory ground and condition in the way Ruda does, opens him up to the charge of simply assuming or dogmatically asserting a ground that can be questioned and thus stands in need of further justification: politics could be otherwise and they can be unethical. Furthermore, Ruda's argument that politics are the ultimate ground of justification cannot itself be a politically conditioned statement, if it wants to avoid the skeptical challenge of arbitrariness: unless Ruda makes his declaration about politics from a neutral, privileged point

70 Ruda, *Rabble*, p. 5.

71 Hegel, *Encyclopedia I*, p. 72.

72 Hegel, *Mind*, p. 276.

73 Hegel, *Mind*, p. 257.

74 Hegel, *Mind*, p. 276.

of view that is itself independent from the influence of politics, the validity of his claims would be as contingent as the politics that condition his thinking. However, the claim about politics' fundamental character needs to be necessary to retain any argumentative import. Otherwise, a change in politics would entail a change for the argument that politics are the ultimate condition of thought. If politics are the ground for Ruda's claim that politics must be the ground, the notion that politics are the ground is as contingent as the politics it relies on and thus lack the necessity and unconditionality they must imply to compete with Hegel's account of concept-based right.

This contradiction motivates Hegel to argue that only unconditioned and self-justifying, yet contentful truth itself can serve as an appropriate (self-)ground for philosophical claims. To deny that such truth exists is to claim that *all* knowledge is conditioned, which is self-contradictory:

- (1) All knowledge of truth is conditioned
- (2) (1) is unconditioned knowledge of truth

(C) Contradiction: (1) is false, there is unconditioned knowledge of truth

To Hegel, Ruda's notion that politics condition philosophical thought thus amounts to the self-contradictory claim that it is unconditionally true that all thought is conditioned. Hegel avoids this by arguing that all historically manifest, conditioned, and changing politics exist because there metaphysically and thus unconditionally exists the philosophically describable, and concept-based truth he calls objective *Geist* and that historically manifests itself in different guises and stages of self-adequacy.⁷⁵

This also constitutes the grounds for Hegel's rejection of Kervégan's claim that contemporary thinkers cannot think philosophy's metaphysically grounded, unconditioned truth. To Hegel, the philosophical thinking and

75 And while Hegel admits it is possible that he as a historical individual was at least partly conditioned when describing of the philosophical truth of the modern state, he succeeds by his own standards insofar as he does articulate objective *Geist's* unconditionality.

describing of unconditioned truth is always possible for all spiritual beings since philosophy constitutes *Geist's* self-comprehension. Where- and whenever *Geist* exists, it can comprehend itself via thinkers' autonomous decision to do so. "Our" contemporary lack of philosophical thinking is thus our own fault – and *Geist's* insofar as we and *Geist* are speculatively identical.

However, even if one accepts Hegel's notion of philosophy and its implied critique of Ruda's method and of Kervégan's skepticism about contemporary thinkers' ability to engage in philosophical thought, and if one assumes – for the sake of the argument – that both critics lay claim to articulating the truth about unconditionally true sociopolitical normativity in the manner that also Hegel aspires to do, the question remains by which criterion their descriptions' relative merits ought to be judged.

4 Part III: Absolute *Geist* as Criterion of Thought

One may thus ask which of a plurality of competing descriptions of unconditioned, philosophical truth, if any, manages to live up to the standard of articulating truth's self-comprehension. In the light of Hegel's own and his critics' status as empirical, potentially conditioned thinkers, it seems that anyone's knowledge claims are as valid as anyone else's: Hegel might be just as right and wrong about unconditioned truth as his opponents are. Every finite, historically situated, empirically conditioned thinker could end up describing passing conditions, representations, prejudices, dogmas, and otherwise relative notions⁷⁶ instead of unconditioned truth. So how do finite, situated thinkers as them and us know that they or we have philosophical knowledge and how can one know who, if anyone, expresses it? Defending the actuality of reflectively known, philosophical knowledge, Hegel argues that philosophy is not just the activity of individual, finite thinkers. Instead, it is also the universal and unconditionally true idea in its form as *Geist* – that is in active ("subjective") form – that thinks itself:

⁷⁶ Hegel, *Right*, p. 17.

This concept of philosophy is the self-thinking Idea, the knowing truth [...], the logical with the meaning that it is the universality verified in the concrete content as in its actuality.⁷⁷

Finite, truth-thinking philosophers are part of this self-thinking by the idea-based *Geist*. They can be described as *Geist's* particular dimension while *Geist's* unconditionality represents *Geist's* universal dimension, all within a framework based on the logical concept's description of these moments. Since particular thinkers and *Geist's* universality are united and thus identified in *Geist's* concept-based individuality,⁷⁸ the successful philosopher qualifies as enabling,⁷⁹ participating in, and articulating *Geist's* self-comprehension. Successful philosophers are thus universal and unconditioned, absolute *Geist*, while *Geist* is them: they think what *Geist* thinks, while *Geist* thinks what they think.

But how does a given thinker or his audience know that she or he is an active part of *Geist's* successful self-comprehension? It seems that any particular thinker's knowledge claim can be questioned by asking how one knows that one philosophically knows and how one can know that someone else philosophically knows. For example, Hegel was convinced that he was expressing the unconditioned truth about monarchy, the family, democracy, etc., while most of his contemporary readers would disagree with him about this. And yet, how can we know today whether Hegel was right or wrong or that we are right in criticizing or supporting him or whether he and we are all wrong with our claims about the unconditioned truth of political normativity?

It follows from Hegel's concept-based arguments about the relationship of the particular thinker to *Geist's* universal dimension that the only valid criterion for the evaluation of philosophical thought is unconditioned, absolute *Geist* itself. If a particular thinker articulates universal *Geist's* self-comprehension, the thinker speaks not only with his or her own voice but also with the voice of the unconditioned truth of universal *Geist*. At the same time, the presence of this voice and its truthfulness is

77 Hegel, *Mind*, p. 275.

78 Hegel, *Mind*, p. 20.

79 Hegel, *Mind*, p. 267.

only recognized by those who actively enable and participate in absolute *Geist's* self-thinking. Only universal *Geist* can thus recognize itself in the thought of particular thinkers, that is, only particular thinkers who correctly channel and are open to universal *Geist* comprehend philosophical truth. Only universal *Geist* functions as an adequate criterion for the evaluation of a given description of truth.

This entails that if Hegel did articulate absolute *Geist's* self-comprehension and insofar as we recognize the truthfulness of his claims, we are channeling absolute *Geist's* universality and judge with the authority of unconditioned truth rather than just our own. However, insofar as Hegel was wrong about sociopolitical normativity, he fell short of articulating absolute *Geist's* comprehension and will be exposed as such by us insofar as we channel unconditioned truth. In contrast, if we still take him to be right despite his being wrong, or if we take him to be wrong for the wrong reasons, also we fall short of participating in universal *Geist's* self-comprehension.

4.1 *To Know That One Knows and Unwarranted Doubt*

With regards to the aforementioned critiques of Hegel's account of civil society, this entails that both Kervégan and Ruda might be articulating *Geist's* self-comprehension rather than Hegel. Should this be the case, the thinkers who also achieve this will concur with them against Hegel. On the other hand, should Hegel be correct, truth-articulating thinkers will concur with him. Should neither Hegel nor his critics be correct about civil society, truth-channeling thinkers will reject them all.

However, those thinkers who do channel *Geist's* self-comprehension and recognize it in Hegel or in his critics will not be motivated to either question themselves or the thoughts in which they find unconditioned truth insofar as they are aware of their knowing the truth. True philosophical thought can thus be reflectively recognized as such while it may also be unnecessarily questioned. One might thus reflectively know that one knows truth or not reflectively know that one knows. Still, knowing philosophically in the most concrete meaning of the term implies that one knows and one reflectively knows that one knows.

And yet, since individual thinkers retain their autonomy in the act of thinking unconditioned truth, the possibilities of their own error and of doubt remain in their thinking. The retaining of the particular thinker's autonomy in the face of universal *Geist's* truth also implies that it is always possible for the thinker to negate the truth. However, when they actually know truth, they know error to be a mere possibility. Throughout this process the thinker remains truth-independent in the sense that her or his identification with truth is up to the thinker and is neither necessary nor contingent. Rather, it is the thinker's free choice to think truth that leads to his spiritual identification with absolute *Geist's* self-comprehension. While the thinker's unity with *Geist's* truth is always possible, it is up to the thinker to render it actual. And whether the unity's actuality persists in time, depends on the thinker's free decisions.

The same applies to doubt: the thinker has to autonomously decide whether to actually doubt *Geist's* truth or not and thus whether to render actual the possibility of doubt. Whilst doing so would be irrational, the particular thinker can freely decide to think along with or to think against truth. As soon as one thinks actual truth, the possibility of error and thus self-doubt become irrelevant but they remain options that may be rendered actual by the thinker. To actually know unconditioned truth thus entails that one voluntarily ceases to actually doubt one's knowledge. And while error and doubt remain possibilities, one decides to not render them actual. According to Hegel, thinkers who truly know philosophically thus cease to question the actuality of the truth they know and they are able to answer all possible challenges to their knowledge with reference to the categories and their deduction, as they are able to point out the instability of their challengers' categorical commitments.

By contrast, skeptics continuously decide to undermine their own truthful and untruthful intellectual intuitions by declaring all knowledge and ignorance equally possible and no knowledge to be actual. Meanwhile, dogmatic thinkers accept a true or false intellectual intuition without entertaining the possibility of its falsehood. Furthermore, while their description of the intuition might be correct, they find themselves incapable of reasoning philosophically for it, that is, to deduce and connect it with

other intellectual intuitions, which in turn prevents them from dealing with challenges in a concept-based, syllogistic manner.⁸⁰

4.2 *Showing That One Knows*

Crucially, Hegel's arguments about philosophical reasoning are thus not limited to possessing truthful intellectual intuitions about categorical shapes, such as civil society. Instead, the channeling of *Geist's* self-comprehension not only implies that one thinks and assents to the correct intellectual intuitions but it also matters how an intellectual intuition is argued for, how it is placed within the philosophical system and thus how it is connected to the other determinations through the dynamics of the concept.⁸¹ Philosophical knowledge is thus ideally presented as a circular account of intellectual intuitions and thus categorical determinations that are shown to follow from and to be connected by the one concept. According to Hegel's notion of philosophy, a truth-tracking philosopher will thus demand that a given categorical determination of truth, such as civil society, is truth-adequately defined *and* deduced to establish the actuality of knowledge. Falling short of a concept-based, systematic presentation or of defining the category correctly implies that truth's self-comprehension is incomplete and the philosophical account remains unconvincing.⁸²

This also entails that the only way to show that a finite philosopher philosophically knows is for him to define and deduce unconditioned truth's categories, hoping that the unconditioned truth he articulates is recognized as such by other thinkers who also channel truth's self-comprehension or that his errors will be corrected through them or his own thought. Should he articulate truth but they fail to recognize it despite the thinker's best efforts to argue for the truthfulness of his own claims, there is not much left to do but to show how the critics' positions self-undermine

80 Hegel, *Encyclopedia I*, p. 43.

81 Hegel, *Encyclopedia I*, pp. 43–44.

82 Hegel, *Encyclopedia I*, *ibid.*

or fail to incorporate aspects of the truth that are necessary to avoid self-contradiction. This might motivate them to reformulate their accounts in line with or closer to unconditioned truth. Should the immanent criticisms of truth's critics not fall on (voluntarily) open ears, there is nothing further a truth-channeling philosopher can do. Throughout, the actuality of truth-articulation depends on thinkers' autonomous decisions to open their mind to and simultaneously to follow unconditioned truth by letting go of unquestioned dogma, assumptions, false representations, bias, prejudice or mistaken intellectual intuitions and by actively making the effort to think true categorial determinations and deductions.

4.3 Kervégan's Critique

With regards to Kervégan's critique, this entails that true reconciliation can only take place insofar as truth is philosophically comprehended and its effects are identified within empirical reality: philosophically informed thinkers will only accept reality insofar as they grasp it to be an articulation and in the service of the unconditioned truth that successful philosophy describes. Such reconciliation is based on the notion that everything that exists is posited either as a direct expression of truth's positive content or the kind of truth-positing self-negation that serves to maintain truth's actuality.⁸³ With regards to civil society's wealth distribution, this means that either a certain distribution of wealth qualifies as positive expression of rationality or that it serves to define and challenge the positive expression. From the standard of right, the empirical existence of given inequalities and poverty may thus never be justified as something to be passively accepted and might only historically serve to remind a state's population of the value of relative equality and wealth. Empirically existing inequality and poverty have to be battled in the name of right, albeit against the background of a philosophical comprehension of their origin and inevitable role in a rational society.

83 Hegel, *Encyclopedia I*, p. 33.

The other implication of Kervégan's argument, namely that contemporary thinkers refuse to think philosophically (and thus with systematic, metaphysical reference) in Hegel's sense, would be deemed a psychological or sociological point insofar as Hegel's notion of philosophy implies that thinkers are capable of philosophically thinking unconditioned truth *in principle*. Should Kervégan suggest that thinkers cannot decide to think freely and thus philosophically because of empirical conditioning, he might be asked whether he implicitly rejects the notion of unconditioned, philosophical thought in Hegel's sense.

4.4 *Philosophy and Ruda's Critique*

With regards to Ruda's critique about the empirical limitations of Hegel's thought, it could be the case that Hegel was not yet able to comprehend right's true form, as it had not yet sufficiently manifested itself during his time. Ruda's Hegel might thus be mistaken because his own errors of judgment, psychological, political or other reasons such as historical conditions motivated him to endorse the wrong representations and form false concepts about philosophical truth. Hegel might thus have been unable to replace representations with true concepts⁸⁴ and thus fell short of identifying and articulating the unconditioned truth of right that is inherent in conditioned sociopolitical reality.

Taken as a concern with unconditioned truth, Ruda's critique seems to suggest just that: Hegel was unable to comprehend that an inequality-producing bourgeois market economy was ultimately irrational because the rabble it produced had not yet turned into the proletariat with a shared class consciousness and capacity for action.⁸⁵ In contrast, due to his own historical luck of birth and insight, Ruda is able to identify and correctly interpret the role of the proletariat and comprehend that their actions will enable the identification and justification of a new and true concept of right that replaces Hegel's.

84 Hegel, *Encyclopedia I*, p. 31.

85 Ruda, *Rabble*, p. 22.

Given the seeming contemporary dominance of several forms of market capitalism, this would raise the question whether the time has still not come to define such a new notion of right, as maybe no suitably reformed society exists yet to enable the comprehension of the actually true notion of right by the philosopher. Ruda's proletariat might still have to develop a suitably deep and broad class consciousness and then translate it into political action to create a society that enables the philosopher to form truth-adequate representations within which the unconditioned concept of civil society may then be found.

Or, such a society already exists but a superior account of right to Hegel's still needs to be formulated in a systematic manner. Such an account would have to surpass Hegel's with regard to the truthfulness of its intellectual intuitions and its deductions of these. In any case, until Hegel's systematic method or his commitment to the metaphysical concept is refuted, his accounts of right and civil society are vulnerable to criticisms that rely on and defend an equally valid or a superior method. Should such a method demand a system, his system would have to be replaced with another or his system would have to be at least partly corrected, for example, with regards to his account of right, by overcoming the falsehood of his intuition(s) and/or deduction(s). Alternatively, critics like Ruda may challenge Hegel's notion of philosophy and its method altogether but would have to do so without falling victim to the self-contradictions that a notion of philosophy as an exercise in conditioned or inconsistently structured thinking entails.

5 Conclusion

With regards to the content of Hegel's concept of right, two of Hegel's recent critics seem to reject his notion that some contingency, social inequality, decadence, and poverty are inevitable within civil society. Since Hegel rejects any notion of truthful philosophical thought's dependence on external conditions, Kervégan's worries about contemporary thinkers' unwillingness to engage in metaphysically grounded thinking seem

equally at odds with Hegel's project as Ruda's insistence on politics as an inevitable condition of philosophical thinking.

However, since Hegel provides a metaphysical justification for poverty's and inequality's existence, which entails that all positive moments of right, such as wealth creation and its ethos-ensuring distribution imply their own negation, the burden of refuting Hegel's method and its resulting systematic determinations and deductions seems to be placed on the critics. Lacking explicit methodological reasons, they might have to refute Hegel's method, his metaphysics, or parts of his system when arguing for a more convincing concept- or otherwise-based notion of right.

8 A Political Philosophy to Guide Practice

Hegel's *Rechtsphilosophie* and Criminal Accountability

I Introduction

Hegel's political philosophy is often thought to be so mired in metaphysical assumptions and obscure abstractions as to be of little practical use in addressing issues of public affairs. I believe the value of a political philosophy lies primarily in its ability to help us address such issues, and so if this charge were valid it would cast doubt on the value of Hegel's work. I come to Hegel's defense. I show how in his *Rechtsphilosophie* Hegel develops a political philosophy that sees individuals as both (i) part of an "ethical substance" that shapes them and provides an objective basis for determining what is right, and (ii) agents of will with a right of "subjectivity" – a right to know the grounds of the laws they must obey – which he then uses to articulate a theory of criminal accountability which speaks to modern debates about whether the law should recognize defenses based on insanity or culture.¹ Besides arguing for the practical relevance

1 Hegel's *Rechtsphilosophie* refers to the *Philosophy of Right*. Abbreviations in citing: *PR* – G. W. F. Hegel, *Elements of the Philosophy of Right*, trans. by H. B. Nisbet (Cambridge: Cambridge University Press, 1990) (and German edition: G. W. F. Hegel, *Grundlinien der Philosophie des Rechts* (Frankfurt am Main: Suhrkamp, 1976)); numbers are paragraphs; *Rem* refers to published remarks; *Z* to Additions (Zusatz) from lecture notes appended to the paragraphs; *Bem* to Hegel's marginal notes in Hegel, *Grundlinien der Philosophie des Rechts*. Hegel lectured on the philosophy of right several times and I cite lecture notes taken by Hegel's students. *Rph I* – G. W. F. Hegel, *Vorlesungen über Naturrecht und Staatswissenschaft*, ed. C. Becker et al. (Hamburg: Felix Meiner Verlag, 1983); *Rph II* – G. W. F. Hegel, *Vorlesungen*

of Hegel's philosophy of right, I seek to clear up a confusion about Hegel's position on criminal accountability.

2 The Theoretical Foundation of Hegel's Views on Punishment and Accountability

One of the central features of Hegel's political philosophy is his account of legal punishment. This is not surprising since, among all the powers of the state, the power to punish may be the most imposing and most in need of justification. Hegel offers a retributive as opposed to a utilitarian justification of punishment. The utilitarian is guided by the principle that we should approve or disapprove of every action whatsoever "according to the tendency which it appears to have to augment or diminish the happiness [utility] of the party whose interest is in question."² The utilitarian supports punishment only if the mischief it produces, mainly the pain inflicted upon the criminal but also other social costs, is outweighed by the benefit it has in reducing crime, which it does by deterrence, incapacitation, and reform. Whether punishment is just or fair is beside the point to the utilitarian: What matters is whether it promotes social welfare.³ Hegel recognizes the value punishment has in reducing future

über Rechtsphilosophie (1818–1831), in 4 vols, ed. K.-H. Ilting (Stuttgart-Bad-Canstatt: Friedrich Frommann, 1973), vol. 1; *Rph III* – G. W. F. Hegel, *Philosophie des Rechts: Die Vorlesung von 1819/20*, ed. D. Henrich (Frankfurt am Main: Suhrkamp, 1983); *Rph V* – Hegel, *Vorlesungen über Rechtsphilosophie*, vol. 3; and *Rph VI* – Hegel, *Vorlesungen über Rechtsphilosophie*, vol. 4. Other abbreviations: *PH* – G. W. F. Hegel, *Philosophy of History* (New York: Dover, 1956); *PM* – G. W. F. Hegel, *Philosophy of Mind* (Pt. 3 of the *Encyclopedia of Philosophical Sciences* [1830]), trans. by W. Wallace and A. V. Miller (Oxford: Oxford University Press, 1971); and *PM-Petry* – G. W. F. Hegel, *Hegel's Philosophy of Subjective Spirit*, vol. 2, ed. M. J. Petry (Dordrecht: D. Reidel Publishing, 1978).

2 J. Bentham, *An Introduction to the Principles of Morals and Legislation* (New York: Hafner Press, 1948), ch. 1, sec. 2. Hereafter *PML*.

3 L. Kaplow and S. Shavell, *Fairness versus Welfare* (Cambridge: Harvard University Press, 2002), ch. 6; and *PML*, ch. 12.

crime, and thinks a judge may take deterrence and reform into account in sentencing a particular criminal: “The various considerations” such as [a punishment’s] effect on individuals “as a deterrence, corrective, etc.” are “of essential significance in their proper context, though primarily only in connection with the *modality* of punishment,” Hegel writes. But – and this is the point he emphasizes – “they take it for granted that punishment in and of itself is *just*.”⁴ For Hegel, we punish criminals not to increase social utility but because otherwise what they did would “be regarded as valid”; punishment is “the restoration of right.”⁵ This is why we have the practice, though in carrying out this essential purpose Hegel suggests we keep in mind subsidiary goals of deterrence and reform. But he would insist we pursue these other goals only when doing so is compatible with the underlying purpose of punishment: to uphold right.

With its focus on upholding “right,” Hegel’s justification of punishment takes us to the core of his political philosophy and his conception of freedom. On Hegel’s view, the laws, institutions, and practices overseen by our state are right (*Recht*) if in adhering to them we are “at home” and free.⁶

When an individual willingly commits a crime – as opposed to breaking the law by mistake (see section III) – not only do they violate a law; at the same time they violate “*Recht*.” Right inheres in institutions and practices that exist even before the state emerged.⁷ Laws formalize the customs and practices we already share as an ethical community: “We have laws against theft only to formalize our practice of respecting the property of our fellow citizens.”⁸ Property is just one example of the shared practices and institutions that make up what Hegel calls our “system of ethical life” („*Sittlichkeit*”). In a modern state these also include monogamous marriage,

4 PR 99 Rem.

5 PR 99; cf. *Rph VI*, 4:549, 3–6; *Rph VI*, 4:549, 17–25: “To leave crime unpunished would let it be seen as right”; PR 99 Bem: “If crime goes unpunished, it would count as valid”; and *Rph VI*, 4:283, 2–23: “To leave it unpunished would make crime seem justified to others.”

6 PR 4 (“the system of right is the realm of actualized freedom”).

7 Cf. PR 100 Rem, p. 191: „Der Staat ist nicht die bedingende Voraussetzung der Gerechtigkeit an sich.”

8 *Rph VI*, 4:603, 25–26.

the provision of social welfare benefits, practices such as promising, norms such as equal and fair treatment of persons, and customs and manners. Hegel says these constitute our “ethical substance.”⁹ This means they are essential to our identity, having socialized and shaped us since we were literally infants.¹⁰ Given this account, Hegel regards a violation of right as an act of self-contradiction. The crime was an act of the individual’s “particular will.” But criminals, as members of this society, whose practices and institutions are their “substance,” have in committing the crime violated their own implicit will. (The assumption that the criminal belongs to the society whose laws they violate will be considered in Sec. V, when I address whether Hegel would think there should be a “cultural defense” for those who commit a crime but were brought up in a different system of ethical life. Already we can see how adopting Hegel’s account of punishment as the restoring of right might have consequences for how we carry out the practice in particular cases.)

Hegel expresses this idea of self-contradiction by saying that in committing the crime the criminal’s will is split: Having been raised in the system of ethical life that provides norms of right conduct, the criminal’s implicit will is to obey the law. But the particular will that they acted upon in committing the crime goes against this implicit will. When we violate right we act against our own (second) nature, against our own ethical substance.¹¹ Hegel concludes that punishment is the criminal’s own implicit will.

Punishment thus serves two functions: It vindicates the law, restoring right – for if we did nothing at all when someone committed a crime, it is as if what they did wasn’t wrong. But also, punishment promotes the

9 *PR* 258; *PH* 72–73; *Enz* 514–517; for discussion see Mark Tunick, *Hegel’s Political Philosophy* (Princeton, NJ: Princeton University Press, 1992), chapter 4.

10 In an earlier work Hegel writes that we are “suckled at the breast of universal ethical life” – G. W. F. Hegel, *Natural Law: The Scientific Way of Treating Natural Law ...*, trans. by T. M. Knox (Philadelphia: University of Pennsylvania Press, 1975), p. 115. See also G. W. F. Hegel, “System der Sittlichkeit,” in *Jenaer Schriften*, ed. G. Irlitz (Berlin: Akademie-Verlag, 1972). Both are discussed in Tunick, *Hegel’s Political Philosophy*.

11 Hegel speaks of custom as our second nature (*PR* 151; cf. *Rph III*, 124:21–28). He says the ethical spirit is what has *become* nature (*Rph III*, 210:5–15).

criminal's interests. Hegel writes that "objectively" punishment "annuls the crime," thereby restoring the law as valid; and "subjectively" through punishment the law, "which is known by [the criminal] and is valid for him and for his protection," is applied on him so that "he himself finds in [his punishment] the satisfaction of justice and merely the enactment of what is proper to him."¹² Here Hegel distinguishes objective and subjective reasons. Objectively, we punish to vindicate right. Subjectively, by punishing the criminal they will experience the consequences of their self-contradictory crime.

Hegel says not only that punishment is the criminal's own (implicit) will, but that by being punished the criminal is respected as a free being: While the criminal "may regard the punishment he faces as a limitation of his freedom," in fact it is "not an alien power to which he is subjected, but rather the manifestation of his own act, and insofar as he recognizes this he faces the punishment as a free being."¹³

Freedom for Hegel clearly means something different than what it means for classical liberals who see freedom as the absence of restraint, and punishment as something that inherently makes us "unfree." As I indicated earlier, Hegel has a positive conception of freedom. Freedom involves more than the ability to renounce commitments and be free of the shackles of others' commands, including the commands of law. That ability is essential to freedom – for, if you could not choose otherwise than to obey others, you would not be free; but it is only a negative "moment" of freedom.¹⁴ To be truly free we must will some content and take on commitments in the actual world.¹⁵ Genuine freedom, for Hegel, contains both these moments. We are free when we place our will in an ethical content from which we could abstract but do not because we are satisfied with this content of our will: We are at home in it.¹⁶ Freedom is willing in accordance

¹² *PR* 220.

¹³ *Enz* 158 Z.

¹⁴ *PR* 5.

¹⁵ *PR* 6.

¹⁶ *PR* 7.

with the demands of our ethical substance, as it is what made us who we are and it is our home.¹⁷

Hegel's conception of freedom appeals to an "objective" source of right: The laws and practices of our ethical substance that are already out there. In the Preface to PR Hegel writes: "The truth concerning right, ethics and the state is at any rate as old as its exposition and promulgation in public laws and in public morality and religion." But he immediately adds: "What it needs is to be comprehended as well, so that the content which is already rational in itself may also gain a rational form and thereby appear justified to free thinking."¹⁸ Contents of our will that are right, and in which we are at home and free, are not justified *by* our choosing them – they are justified by objective criteria. But we are free in these contents only if we can understand them to be rational. We don't literally choose our laws, institutions, and practices – we are born into a society and taught to adhere to them. But we can appropriate as our own content the laws of our ethical community by coming to see them as justified to us.¹⁹ The right to demand that the laws be justified to us is what Hegel calls "the right of subjectivity."²⁰ Hegel says it was Socrates' great contribution to world history to recognize this principle of subjectivity – to demand that the commands of conventional Greek morality accord with his own inner determination of what is right.²¹ While I should not think that laws are justified because I agree with them, which is the mistaken view of social contract theorists who derive the authority of laws from individual consent, still, like Socrates in ancient Athens, I, as an individual in a modern state, will only be free

17 Hegel's conception of freedom raises numerous questions, the most pressing of which may be: Are all the demands of our ethical substance 'right' by definition or is there some standard for determining which are and which are not? I address this in Mark Tunick, "Hegel on Justified Disobedience," *Political Theory*, Vol. 26, no. 4 (1998), pp. 514–535.

18 PR Preface, p. 11.

19 Cf. *Rph III*, 243:25–29; PR 266; and *Rph VI*, 4:640, 4–14: By knowing these institutions to be necessary it is rational for me to will in accord with them and by doing so I am free.

20 PR 107, 118, 132, 260.

21 *Rph VI*, 4:301.

adhering to its laws if I understand their rationality.²² The idea that laws must be both objectively and subjectively justified is a crucial component of Hegel's theory of criminal accountability.

3 Introduction to Issues of Criminal Accountability

Not everyone caught violating the criminal law is or should be punished. There are several sorts of defenses: justifications ("it wasn't wrong of me to break the law because I was justified in doing so"); excuses ("I broke the law but shouldn't be punished as I had an excuse"); and exculpations ("I didn't do the crime – you got the wrong person!"). A person who kills in self-defense, or who steals food to avoid starvation, can persuasively argue that they should not be punished because what they did was justified given the circumstances. I focus instead on excuses. Someone who claims an excuse concedes that they violated the law, but claims they did so involuntarily: They may claim they were insane, under duress, not of age, or were unable to act otherwise because of their cultural or socio-economic background, and as a result they should not be regarded as culpable or blameworthy and are not appropriate subjects of punishment. A defense might completely exonerate, or it might be partial, supporting only a reduction in one's sentence. Some defenses are controversial, others are not. Few will disagree that a 6 year old who pushes their younger sibling out a second story window in a fit of rage should not be legally punished, as they have not yet developed the cognitive and emotional capacities to understand the consequences of what they did and control their rage. But there is considerable disagreement about other defenses. I focus on the defenses of insanity and culture.

Consider the case of John Hinckley, who was found not guilty by reason of insanity after he shot President Reagan and three others in 1981. Hinckley claimed that he shot the President to impress the actress Jodie Foster, with whom he was obsessed. His defense team argued that this

22 Hegel criticizes social contract theory in *PR* 75 Z and 100 Rem.

shows that he was insane – how could a sane person think they would attract a famous movie star, who had shown absolutely no interest in him, by killing the President? The prosecutor disputed the claim of insanity, because Hinckley seemed normal before and after the shooting. For example, he was able to purchase breakfast that morning, locate the President, and make rational choices to avoid capture. They argued that even his scheme to shoot the President in order to make an impression on Jodie Foster “was indeed reasonable since he accomplished it” and that his goal of fame and notoriety made sense. The defense responded that Hinckley lacked the capacity to “appreciate” what he was doing, due to a mental disorder, and it would be wrong to punish someone for actions that were out of their control.²³ The defense prevailed, triggering an angry reaction that resulted in some revisions of the laws on the insanity defense. Can we assess whether someone was insane, and if so, should insanity be a basis to acquit?

As an example of the issue of whether there should be a cultural defense, consider the case of Fumiko Kimura, a Japanese mother living in California. After having suffered inconsolable shame and depression on learning that her husband had kept a mistress, she attempted *oya-ko shinju*, or mother-child suicide, leading her two young children into the Pacific Ocean with the intent that all three of them would drown. In Japanese society a child whose mother kills herself is shunned, and the mother may believe the child would be better off joining her in the after-life. In Japan, where *oya-ko shinju* occurs regularly, the mother is not treated as a murderer. While Ms. Kimura did not die, having been rescued by onlookers, her two children did, and a local prosecutor charged her with two counts of murder. Members of the Japanese community called for a cultural defense: If we punish to mete out just deserts, there would be no point punishing her with the full force of the law. She was not acting with malice, or badly. Rather, she was behaving properly according to a set of beliefs and values shared in her native culture.²⁴ Yet she killed her two children, clearly violating their

23 See “The John Hinckley Trial: Transcript Excerpts,” <<http://law2.umkc.edu/faculty/projects/ftrials/hinckley/hinckleytranscript.htm>> (accessed December 29, 2020).

24 Ms. Kimura was eventually convicted of voluntary manslaughter, and sentenced to one year in jail, five years’ probation, and ordered to undergo psychiatric treatment.

rights and the law. Should she be convicted of murder, or should she have a cultural defense?

A utilitarian might want to reduce the punishment of someone like Mr. Hinckley or Ms. Kimura if they are not deterrable. Bentham, for example, argues against punishment in cases where the penal provision couldn't have prevented the act in question. He gives examples of extreme infancy, insanity, and intoxication, where the person lacks "the disposition of mind in which his conduct will be influenced by the prospect of evils as distant as those the law threatens him with."²⁵ But not necessarily. Some utilitarians argue that if we punished even those who had an excuse, this would demonstrate how serious we are about the imperative not to commit certain crimes. Punishing them could still deter others.²⁶ For utilitarians we punish not to mete out justice or express blame but to make society safer, and a person's culpability is relevant primarily insofar as it signals whether they are deterrable. Their approach differs sharply from Hegel's retributive approach.

For Hegel, we punish to vindicate right, and we need to vindicate right only if right has been attacked. This is why Hegel says we need not punish "non-malicious" wrongs, as in the case where I take your property mistakenly thinking it is mine. The non-malicious wrongdoer respects right in general and simply makes a mistake. There is no need to vindicate right in this case because the wrongdoer has not flouted right.²⁷ For Hegel, we should punish only crimes, not non-malicious wrongs, and this illustrates how culpability is essential on Hegel's account of punishment.

There are degrees of culpability.²⁸ A person is fully culpable for a wrongdoing only if they act *purposely* to commit the wrong. Acting with purpose is to act with viciousness. If one *knowingly* acts to cause harm but causing

For discussion see Mark Tunick, "Can Culture Excuse Crime? – Evaluating the Inability Thesis," *Punishment and Society*, Vol. 6, no. 4 (2004), pp. 395–409.

25 Bentham, *PML* 13:9.

26 H. L. A. Hart, "Prolegomenon to the Principles of Punishment," in S. E. Grupp (ed.), *Theories of Punishment* (Bloomington, IN: Indiana University Press, 1971), p. 369.

27 *PR* 84–86.

28 See American Law Institute, Model Penal Code §2.02 (1985).

harm is not one's purpose, one is less culpable – one acts with callousness but not viciousness. An example is a person who places a bomb on a plane to collect insurance, but who does not intend for the passengers to die, though surely he knows they will die.²⁹ One is less culpable still if one acts not purposely or knowingly but *recklessly*, consciously disregarding a substantial risk. *Negligence* refers to a still lesser degree of culpability, where one does something not intending or knowing that harm will result, and not being aware of a substantial risk: One just didn't think about the harmful consequences of one's acts, consequences one should have been aware of. Finally, a person can be held liable even if they lacked purpose or knowledge and were not reckless or negligent, on a theory of *strict liability*, or liability without fault. Some utilitarians may defend punishment even on a strict liability theory as such punishment would ensure that people are especially cautious about not making a mistake that causes harm, even if the mistake would not be a result of negligence.³⁰ But most retributivists have a hard time defending punishment of those who do not appear to be morally blameworthy as they are not flouting right and there is no need for right to be restored.

The retributive rationale for granting the defense of an excuse is that if, given one's subjective state of mind, including one's intentions and beliefs, one did not act willingly or knowingly in committing a wrong, one is not culpable. This creates something of a puzzle: Why punish the negligent? Why should negligent actors be judged culpable seeing how they do not choose to do wrong, neither intending or desiring it or even believing harm will result from their actions? Hegel provides an important account of why we should punish the negligent. Understanding that account is critical to understanding his views on accountability and how they are grounded in his political philosophy.

29 M. Moore, *Placing Blame: A General Theory of the Criminal Law* (New York: Oxford University Press, 1997), p. 408.

30 See R. Wasserstrom, "Strict Liability in the Criminal Law," *Stanford Law Review*, vol. 12, no. 4 (1960), pp. 731–745.

4 Hegel's Theory of Criminal Accountability

Hegel's theory of criminal accountability is presented primarily in the *Rechtsphilosophie*. His views there, however, can be supplemented by turning to his discussion of insanity and character in the section "Anthropology" in his *Philosophy of Subjective Spirit*.

Hegel's view has been a source of confusion to a number of commentators. Some take Hegel to provide a "subjective" theory of accountability: We are accountable only for what lays in our purpose and not for unintended consequences of our actions.³¹ On that view, it would be hard to see how Hegel could support punishment of the negligent who intend no wrong, though, as we shall see, Hegel clearly does. Others take Hegel to provide an "objective" theory: We are responsible for our actions apart from whether we intended any wrong.³² On that view it is hard to see how Hegel could ever support an insanity defense. To understand Hegel's view we have to see how he takes into account both objective and subjective approaches.

In PR 115–117 Hegel appears to adopt a subjective theory of accountability. Hegel recognizes that it is not always clear whether someone who violates the law is accountable for the consequences of their actions and therefore "committed the act." I may push a person with the purpose of moving them out of my way and without intending to harm them, yet as a result they hit their head against a sharp object protruding from a wall and die: Am I accountable for the person's death? In the *Rechtsphilosophie* Hegel says that "I can be made responsible for whatever was contained in my purpose (*Vorsatz*)."³³ In the example, my purpose was to move the

31 S. Dyde, "Hegel's Conception of Freedom," *Philosophical Review*, vol. 3, no. 6 (1894), pp. 668–669; A. Piontkowski, *Hegels Lehre über Staat und Recht und Seine Strafrechtstheorie*, trans. by A. Neuland (Berlin: VEB Deutscher Zentralverlag, 1960), pp. 270, 276.

32 G. Radbruch, *Der Handlungsbegriff in seiner Bedeutung für das Strafrecht* (Berlin: Degruyter, 1904); and K. Larenz, *Hegels Zurechnungslehre und der Begriff der objektiven Zurechnung* (Leipzig: Scholl, 1927); and works cited in P. Böning, *Die Lehre vom Unrechtsbestehen in der Rechtsphilosophie Hegels* (Frankfurt: Peter Lang, 1978). See also the discussion of Alznauer, below.

33 PR 115 Z. Cf. PR 117.

person out of my way. Hegel distinguishes my purpose from my intention (*Absicht*): My intention refers to the universality the act has in my eyes.³⁴ In the example, I had no intention beyond going to my destination, which required I clear my path; my intention was not to harm the person, although an observer might not believe that. This distinction between purpose and intention corresponds to another distinction Hegel makes, between a deed (*Tat*) and an action (*Handlung*). When I carry out my purpose I do my deed, but my deed is in fact an action with consequences I might or might not have intended. In PR 115–117 Hegel claims that I can be held accountable only for my deed and not the action.³⁵ Hegel's favorite illustration of this, which he repeated almost every year he taught the *Rechtsphilosophie*, is that Oedipus, who killed his father not realizing it was his father, should be blamed for murder but not parricide.³⁶ Hegel also notes that we distinguish murder from manslaughter: "Manslaughter is not murder; it is my deed, but not my action. The will can only be held accountable for the deed – this is the right of knowing."³⁷ In committing manslaughter, one causes another's death, but without intending to. A drunk driver who kills someone while driving drunk did not intend to kill and therefore lacks the culpability of the assassin who plans to murder. When we punish them for vehicular manslaughter, we hold them accountable for driving under the influence of alcohol but not for murder, as they did not know they would kill anyone when they got into the driver's seat. This "right of knowing" is an application of the "right of subjectivity" we earlier saw Hegel defend in laying out his conception of freedom.

But Hegel also recognizes that we do sometimes hold people responsible for consequences that were not within their purpose. I may be "more or less" at fault if things of mine cause damage since the things "are after all mine, although they are in turn only more or less subject to my control."³⁸

34 PR 114 Bem, pp. 213–214.

35 Cf. *Rph II*, 283: "[T]he will is accountable only for what it presupposed and aimed for."

36 PR 117 Z; see *Rph I*, 64; *Rph III*, 93; *Rph V*, 359; *Rph VI*, 315 („Oedip erschlug seinen Vater ohne ihn zu kennen und es war so kein Vätermord“).

37 *Rph VI*, 315.

38 PR 116.

In his lectures Hegel introduces the concept of negligence: “Negligence [Nachlässigkeit] can occur and this can be more or less punishable; one must know what one does and has before him.”³⁹ Hegel had said that we are to be held accountable for what we purpose. He now says we have the responsibility of knowing the universal character of our act and its necessary consequences, and failing to know this is negligent.⁴⁰ A murderer cannot deny responsibility by saying he only meant to injure a piece of flesh, when anyone who can reflect should know that by damaging that piece of flesh one takes away the life itself.⁴¹ One reason Hegel’s theory of accountability in the *Rechtsphilosophie* has understandably generated confusion is that when he first says that one is accountable only for what lays in one’s purpose, he does not really mean what he says.

That confusion dissipates once we understand Hegel’s general strategy of exposition. In arriving at a subtle and complex view, he will lay out one side of the issue which captures a partial truth, and then another side that is incompatible with the first but which also captures a partial truth. Hegel’s considered position recognizes the partial truths of each side and rejects a view that “totalizes” one side or the other taken by itself.

A negligence standard recognizes that individuals have obligations to fellow citizens and are to be held to objective standards that reflect shared values immanent in our “system of ethical life.” This idea is articulated in PR 120 where Hegel moves from a subjective to an objective theory of accountability and announces the “right of intention,” which contrasts with the “right of knowing” to which he had previously pointed: “The right of intention is that the universal quality of the action shall not merely be implicit but shall be known by the agent, and so shall have lain from the start in his subjective will. Conversely, what may be called the right of the objectivity of action is the right of the action to evince itself as known and willed by the subject as a thinker.” Hegel has us impute to the criminal the purpose a rational human being would have had in undertaking the misdeed. In his marginal notes Hegel explains that the subjective purpose of

39 *Rph VI*: 4:315, lines 22–25.

40 *PR* 118 Z; *PR* 118 Bem, p. 222.

41 *PR* 119 Remark; *Rph V*, 363 („ich muß die allgemeine Natur der einzelnen That kennen. Z.B. Ich tödte einen Menschen durch die Verletzung eines Theils“).

a thief may be to steal a thing to enjoy it, but the universal consequence is to threaten society and property.⁴² Any rational human being brought up in our system of ethical life would know that to steal is to make our society unsafe. We respect the criminal as a rational human being by imputing to him the capacity to know what any rational human being should know. We treat them as agents who will the nature of their action.⁴³ On Hegel's view, human beings have the responsibility to know the universal worth of their act, a duty corresponding to the right not to be held responsible for what couldn't be known.

This raises a problem that Hegel recognizes and makes explicit: In some cases it is difficult to identify those consequences of "deeds" („*Taten*") which we should assume any rational person would foresee, and those consequences which are contingent and which a rational person may not foresee. In a tragic case from the 1960s, Max Feinberg owned a cigar store in Philadelphia and sold sterno, which is designed for cooking and heating. Some of his customers, however, consumed sterno as a form of alcohol. A new, more toxic sterno was shipped to his store and he sold hundreds of cans of this new variety. Shortly after these sales, thirty-one people died as a result of methanol poisoning traced to the new sterno. Is Feinberg responsible for their deaths?⁴⁴ The question may turn on whether he knew that some of his customers consumed the sterno he sold them; if he did, and if he was aware that the new sterno had a much more toxic formulation, then he should have known that selling them the new sterno would foreseeably lead to their deaths. It was certainly conceivable that Feinberg had this knowledge. Contrast this case with an example that Hegel discusses in his lectures. While hunting, I shoot at what I believe is a deer. But I did not know that in fact it was a man, who dies from my shot.⁴⁵ In both cases one's degree of culpability depends on particular facts: Does the hunter know he has poor eyesight? Did he take due care in scouting out his target? Should

42 *PR* 120 Bem, pp. 227–228.

43 *Rph* V, 370; *Rph* VI, 325.

44 *Commonwealth v. Feinberg*, 253 A.636 (Pennsylvania Supreme Court 1969).

45 *Rph* I, 64 („Wenn einer auf den Jagd einem Menschen schießt, indem er glaubt, ein Wild zu töten, so hat er nicht schuld daran; er läßt sich es nicht zurechnen"). Cf. *Rph* VI, 315.

we expect a store owner to check the content of each shipment received before putting it on the shelves? Hegel recognizes that the line between a contingent and necessary consequence of acts can be indeterminate.⁴⁶ I take him to leave the line-drawing to a jury or trial judge as it is not something a philosopher can settle. Hegel's theory is not ambiguous, but is a theory that sometimes applies to ambiguous fact situations.

One factor Hegel identifies that may bear on whether we assign responsibility to individuals who did not intend for their deeds to have the regrettable consequences that in fact resulted is the foreseeability of the threat their deeds pose to the public security. A rural fire may destroy only a single home but a fire in a more densely populated area could spread and destroy an entire town.⁴⁷ Hegel's point here is not quite the point he later makes in PR 218 that a proper penal sentence is a function of both culpability and harm, the latter being a function of circumstances outside the control of the actor. There he argues that the appropriate punishment for a crime may depend on the moral development of a society, with more developed societies that are less vulnerable to crime able to impose less severe punishments.⁴⁸ His point here, rather, is that as "I ought to be aware ... of the universal which is associated with [my individual action]," so must I be aware that the consequences of my actions may be more serious in some circumstances than in others.⁴⁹

We should not confuse this position with a defense of strict liability, according to which one is held accountable even if not at fault or negligent. Mark Alznauer appreciates the complexity of Hegel's theory of accountability in its appealing to both objective and subjective factors, but appears to take Hegel as supporting strict liability. Alznauer gives the example of a perfectly scrupulous driver who is not negligent in driving – they are not, for example, making a phone call while driving – but who nevertheless injures someone in a traffic accident. Alznauer thinks that it is a "common

46 PR 118 Rem; *Rph III*, 95 („Die bemerkte Kollision [zwischen dem Objektiven und Subjektiven] läßt sich nicht absolute beseitigen ... Es kann hier nur eine Annäherung eintreten"); cf. *Rph V*, 359.

47 *Rph VI*, 278ff.; cf. PR 118–119.

48 PR 218, Rem and Z.

49 PR 118 Z.

conviction” that the driver is legally responsible for the damage caused and that Hegel agrees.⁵⁰ I find this interpretation problematic for two reasons, the first of which is instructive for understanding Hegel’s theory of accountability. Alznauer assumes that the driver is not negligent because they aren’t doing anything wrong that they could control, such as driving while distracted, and so to hold them responsible requires a theory of strict liability. But for Hegel the fault involved when one is negligent can simply be a failure to recognize the foreseeable consequences of an act that any rational being should have foreseen. It needn’t involve misfeasance such as texting while driving. Since it is not foreseeable that one will cause an accident while driving with special care, I don’t think Hegel would think the driver is culpable. This leads to the second reason I think Alznauer’s example is problematic: I don’t think it is a “common conviction” that the driver should be held liable in this case. Hegel’s theory of punishment is premised on the view that humans, unlike animals, are rational beings to whom we can impute the knowledge of the universal consequences of their acts. This is why we punish even for negligence but do not hold people accountable for consequences a rational person could not reasonably foresee.

5 Applying Hegel’s Theory

5.1 *Insanity Defense*

But what if a person is not rational but insane? The issue in the Hinckley case (section III) is not whether a consequence was necessary or contingent, or whether Hinckley’s purpose in firing his gun was to shoot his targets. It surely was his purpose, and injury or death to his targets was entirely foreseeable. The difficult issue is whether Hinckley appreciated the wrongfulness of his action or whether he was able to act otherwise.

50 M. Alznauer, “Hegel on Legal and Moral Responsibility,” *Inquiry*, vol. 51, no. 4 (2008), pp. 381–382. Cf. M. Alznauer, “The Role of ‘Morality’ in Hegel’s Theory of Action,” *The Owl of Minerva*, vol. 44, issue 1/2 (2012), pp. 77–79, 82.

In U.S. law, courts distinguish volitional defects, such as an “irresistible impulse,” from cognitive impairments, both of which may be temporary or not, and there is disagreement as to whether either should excuse a defendant from blame. While Hegel doesn’t explicitly distinguish these categories, his discussion of the insanity defense speaks to the modern day debate.

In turning to Hegel’s views on the insanity defense (and on the cultural defense in the ensuing section) I will rely not just on the *Rechtsphilosophie* but also the *Philosophy of Subjective Spirit*. The philosophy of subjective spirit concentrates on the point in spirit’s development at which it “has reached its extreme immersion in its subjectivity.”⁵¹ Part of the *Encyclopedia*, it was written and revised in roughly the same period Hegel wrote and lectured on the *Rechtsphilosophie*.⁵² In its section titled “Anthropology” Hegel discusses the “soul” as it is “tied to its natural forms” and enters into opposition and conflict with its natural aspect. The middle section traces how the soul then divides against itself in a diseased state, conditioned by its naturalness yet also separated from its substance, so that it is in an intermediate stage between its natural life and free consciousness.⁵³ Here Hegel considers insanity at length. I should note that while Hegel no doubt thinks he is basing his discussion on the best empirical science of his day, he wrote two centuries ago and some of his analysis, including its use of terms such as “lunatic” and “madman,” will seem crude today.⁵⁴

We might expect Hegel to favor a defense for the insane on the ground that they are unable to exercise the “right of subjectivity”: Like children, or those under hypnosis, they lack the requisite capacities to choose to act for their own purposes with an understanding of the consequences. If

51 *PM* 387 Z, p. 27.

52 The philosophy of subjective spirit was published in Heidelberg in 1817 and revised in Berlin in 1827 and 1830. The *Philosophy of Right* was published in 1821 and Hegel lectured on the subject numerous times in Berlin.

53 *PM* §402 Z, pp. 89–91.

54 This is especially so in light of how terms such as “imbeciles” and “morons” were used in the twentieth century to commit injustices upon those who were not upper-class whites. See, for example, A. Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* (New York: Penguin, 2017).

their actions do violate the law, it is not because they freely chose to flout right. Punishment, which aims to restore right, would serve no purpose in their case. They are not culpable at any level. In the “Anthropology” Hegel supports a defense of hypnosis on the ground that a person who commits a crime while under hypnosis is subject to an alien power and does not act freely.⁵⁵ In the *Rechtsphilosophie* Hegel argues that children generally cannot be held accountable. While he notes that courts in different societies vary in how they assess the culpability of children – in Germany, children cannot be brought before a court and punished, while in England they are often subject to disciplinary action – he says that children generally lack the rationality needed to recognize the universal in their deeds.⁵⁶

Hegel’s views on insanity are more complicated. In both the *Rechtsphilosophie* and the “Anthropology” Hegel addresses whether the insane so lack the capacity of thought and free will as to be regarded as animals rather than human beings and consequently not accountable for their crimes; or whether they retain a capacity for rationality so that they are accountable.

The “Anthropology” has the more extensive discussion of insanity. There he characterizes insanity as a “psychical disease, i.e. a disease of body and mind alike,” where the soul no longer retains self-mastery.⁵⁷ The subject is engrossed with a “single phase of feeling” which it fails to give its “proper place [in] the world.” The person with “mental derangement” focuses on a “fixed idea which is not reduced to its proper place and rank.”⁵⁸ But madmen are not completely irrational, and Hegel notes that the line between groundless and senseless outbursts of hatred by normal persons and acts of insanity or derangement may be hard to draw. He compares the difference between the insane and the normal person to the difference between someone dreaming and someone awake, except that in insanity “the dream falls within the waking limits.”⁵⁹ The insane soul clings to a

55 *PM* §406, pp. 115–117, discussed further below.

56 *Rph I*, 65.

57 *PM* §408; §406 Z, p. 106.

58 *PM* §408, pp. 122–123, 129.

59 *PM* §408, p. 123.

merely subjective identity rather than to an objective unity of the subjective and objective.⁶⁰

Hegel distinguishes madness both from other conditions that he regards as “lesser” forms of insanity, such as idiocy and cretinism, and from mere error and folly.⁶¹ Fools interest themselves in everything, and are unable to fix attention on anything definite. The fool suffers from a “weakening of the power of the rational consciousness to hold together the totality of its mental representations.”⁶² But this results in error and not madness insofar as the person knows that their subjective idea does not as yet have an objective existence. Error and folly “only become madness when the individual believes his merely subjective idea to be objectively present to him and clings to it in face of the actual objectivity which contradicts it. The madman believes his purely subjective world is quite as real as the objective world” and he is at home only in his subjective ideas.⁶³ To deal with a madman one must begin by reminding him of all the facts in his situation and of the actual world; if he still sticks to his false idea, he is insane for sure.⁶⁴

At this point it sounds as if Hegel is willing to concede that someone can be “insane for sure” and lack the capacity to recognize the objective basis of right. But not so fast. Hegel then says “the objective consciousness of the insane shows itself.” For example, they know “that they are in a lunatic asylum; they know their attendants; they also know that the other people there are insane”; and they carry out all sorts of duties. Madmen possess a “proper, rational consciousness, a correct appreciation of things and the ability to act rationally,” which makes it possible that “sometimes a madman is not at once recognized as such.”⁶⁵ The insane, deranged, lunatics, melancholics, and hypochondriacs are still rational, moral beings, capable of moral relationships.⁶⁶ For evidence Hegel cites Pinel, who notes

60 *PM* §408, p. 125

61 *PM* §408, p. 132.

62 *PM* §408, p. 133.

63 *PM* §408, pp. 133–134.

64 *PM* §408Z, pp. 127–128.

65 *PM* §408, p. 134.

66 *PM*-Petry, pp. 374–375; cf. *PM* §408, p. 137 (“still moral beings”).

that he has nowhere seen more affectionate spouses and fathers than in lunatic asylums.⁶⁷ Evil is always latent in the heart, and in the insane the “evil genius of man” gains the upper hand.⁶⁸ But the better and more intelligent part is there also. The malice that madmen sometimes show doesn’t prevent them from having moral and ethical feelings; but the madman is mastered by the unmediated opposition present in him. Hegel is seesawing between what he takes to be two partial truths: The insane are ethical beings who can act rationally, but are not masters of themselves.

Hegel then turns to the question of criminal accountability. In §408 of the “Anthropology” Hegel writes that lunatics “still have a feeling of what is right and good” and that one should not harm others. “Consequently they can be made aware of the wrong they have committed, can be made accountable for it and punished for it, and can be made to see the justice of the punishment meted out to them. Thereby their better self is encouraged and when this happens they gain confidence in their own moral strength.”⁶⁹ Because insanity or mental derangement is not an “abstract loss of reason (neither in the point of intelligence nor of will and its responsibility), but ... only a contradiction in a still subsisting reason,” and because the rational nature of the insane is “not yet entirely destroyed,” the insane “deserve considerate treatment” and so restraint “has to be applied to these unfortunates” so as to have the moral significance of a just punishment.⁷⁰ One should not treat them in a “hard, arrogant, contemptuous manner.”⁷¹

In the “Anthropology” Hegel emphasizes the implicit rationality of the insane and the need to treat them with compassion. His openness to mitigating their punishment translates not to his recommending a reduced sentence but, rather, to rejecting a “penal attitude” in favor of a

67 *PM* §408, pp. 135–136.

68 *PM* §408, p. 126.

69 *PM* §408, p. 138. The passage is ambiguous: the wrongs it refers to might mean the crimes for which the insane have been committed; or it might refer only to bad things they do while being treated. Petry uses the present tense “if they do anything wrong”; Miller uses the past tense “the wrong they have committed,” which is truer to the original German: „das Schlechte, daß sie begangen haben.”

70 *PM* §408, p. 138.

71 *PM*-Petry, p. 381.

more therapeutic approach: a punishment without “hardness.”⁷² In the *Rechtsphilosophie* Hegel similarly recognizes the implicit rationality of the insane; however unlike in the “Anthropology,” he allows for reduced punishment for the insane because of their diminished capacity. In the published *Philosophy of Right* he qualifies this by saying that mitigation of punishment is a matter of mercy or clemency (*Gnade*), not of right,⁷³ but in the set of lectures that provides one of the *Rechtsphilosophie*’s most extensive treatments of the insanity defense he does not explicitly make this same qualification.

As he is wont to do, Hegel presents competing sides of the debate in his *Philosophy of Right*. At first, he provides the main argument for an insanity defense. In PR 120 Hegel says that imbecility, lunacy, and infancy – a legal term that encompasses children – are “such pronounced conditions” as to annul the character of thought and free will and “allow us to deny the agent the dignity of being a thinking individual.” Later, in PR 132 Rem, he presents the other side, but his discussion gets especially complicated because he now distinguishes different categories of people with reduced capacity. Hegel distinguishes children and the insane from those suffering a temporary impairment, and appears to excuse only the former: “To make momentary blindness, the excitement of passion, intoxication, or in general what is described as the strength of sensuous motives (*Triebfedern*)” as grounds for taking away the criminal’s guilt is “to deny the criminal the right and dignity of a human being” and to treat them like an animal. “The claim is made that the criminal in the moment of his action must have had a ‘clear idea’ of the wrong and its culpability before it can be imputed to him as a crime. At first sight, this claim seems to preserve the right of his subjectivity, but the truth is that it deprives him of his indwelling nature as intelligent ... [O]nly in cases of madness” is one so deranged as to “be divorced from the knowledge and performance of individual things.” It is then that he says that “the sphere in which the above circumstances come into consideration as grounds for relaxing the punishment is not the sphere of right, but the sphere of clemency (*Gnade*).” Unfortunately, we cannot

72 This is a phrase he also uses in the *Rechtsphilosophie*, see *Rph I*, 66, quoted below.

73 PR 132 Rem.

be sure to what Hegel refers when he writes “the above circumstances.” Hegel had discussed both temporary impairments (momentary blindness, intoxication, excitement of passions) and children, imbeciles, and lunatics, leaving his position open to interpretation: Would he mitigate punishment of the temporarily incapacitated (or volitionally impaired) but only as a matter of clemency, but completely exonerate infants and the insane as a matter of right? Or is he saying temporary lack of control due to passion, intoxication, or “excitement” is no excuse at all? Or does he include acts by children, the insane, and the temporarily impaired all as cases where punishment can be mitigated but only by mercy and not by right?

We can try to turn for clarification to passages corresponding to PR 132 Rem in the set of lectures with extensive discussion of the insanity defense, the German text of which I include in this footnote.⁷⁴ Here Hegel says that the insane (*Wahnsinnige*) may be disciplined but not harshly, and that “imbeciles” (*„Blödsinnige“*) committing malicious actions in “a moment of fury” (*„im Moment der reinen Wut“*) might be regarded as animals, to be incapacitated and made harmless but not punished. In PR 4 Z Hegel had distinguished humans from animals, saying that “the animal acts by instinct” and has no “will” – it does not “think.” Lacking the capacity of free will, animals can’t be punished, since we punish to restore right and animals don’t flout right. But as he did in PR 132 Rem, Hegel again resists this argument. He repeats that we must honor human beings by imputing to them awareness (*kennen*) of the universality of their action. Whereas in PR 132 Rem Hegel left the matter open to interpretation, in the lectures, while not entirely clear, Hegel does seem to say that the above-mentioned

74 *Rph I*, 66 („Wahnsinnige sind wegen böser Handlungen zu züchtigen, aber ohne Härte. Blödsinnige, die im Moment der reinen Wut Verbrechen begehen, sind als Tiere zu betrachten, und sie können wie Tiere abgeschreckt werden, man kann sich vor ihnen zu sichern suchen, man kann sie unschädlich machen. Aber immer muß man annehmen, man muß dem Menschen die Ehre antun anzunehmen, er habe das Verbrechen von der Seite seiner Allgemeinheit gekannt. Aus dem Gesichtspunkt, das der Verbrecher die Handlung nicht in ihrem wahren Wert kannte, kann die Strafe gemildert werden, aber den Gerichtshöfen sollten die Milderungsgründe nicht in ihrem ganzen Umfang zustehen; die Hauptsache in Ansehung der Milderungsgründe muß einer höheren Macht, dem Regenten, angehören“).

“imbeciles” and “insane” can have their punishment reduced. Now he says that the full scope of mitigating factors should be a matter in the hands of a power superior to the court – the regent. He may mean that it is a matter for clemency and not right, but there are other ways of reading the passage. Just earlier in the lecture Hegel had emphasized the value of definitive laws that don’t leave so much discretion to the arbitrary will of judges that a person receives different rights depending on what day it is.⁷⁵ It is shortly after saying this that he says that punishment of those with diminished capacity can be reduced but the matter should be in the hands not of judges with complete discretion to mitigate, but of the regent.

There are other ways of interpreting Hegel’s claim in PR 132 Rem that mitigation of punishment for those with reduced culpability belongs to the sphere not of “right” but of clemency or mercy. Hegel might mean that reducing the punishment for those who are not culpable is morally but not legally required. But that seems unconvincing given that on Hegel’s theory, right is not merely a moral concept but is supposed to be embodied in the laws and practices of our ethical life. But there is still another interpretation. In the *Rechtsphilosophie* Hegel observes on several occasions that philosophy cannot always translate its conceptual analysis to particular determinations of what is to be done.⁷⁶ This should not be confused with an abandonment of philosophy in addressing matters of public affairs. Rather, Hegel’s point is that sometimes arbitrary decisions need to be made: Do we set the minimum age to vote at 18 or 17 years 100 days? Does one get 40 lashes or only 39 for one’s crime?⁷⁷ Is the driver of an automobile that crashes, or Max Feinberg, culpable for their actions? Is one “surely insane” or merely a “cretin” or “fool”? Whether someone completely lacks the capacity

75 *Rph I*, 65, lines 185–187.

76 *PR* Preface p. 21, Pars. 49, 96 and Z, 101 Rem, 214 Rem, 216 and Z.

77 Christopher refers to *PR* 214 Rem where Hegel says “It is impossible to determine by reason ... whether the just penalty for an offence is corporal punishment of 40 lashes or 39 ... And yet an injustice is done if there is even one lash too many ...” and criticizes Hegel for saying that even a slightly incorrect punishment is an injustice. Christopher fails to see that Hegel is being ironic in this last sentence. R. Christopher, “Deterring Retributivism: The Injustice of ‘Just’ Punishment,” *Northwestern University Law Review*, vol. 96 (2002), p. 894.

to know the consequences of their actions is a matter for a judge or jury to decide based on interpretation of the facts that could go either way in some cases. In saying the decision whether to mitigate someone's punishment does not belong to the sphere of "right" Hegel might just mean it is a matter dependent on particular facts that can't be resolved by philosophy.

One other passage from the lectures appears to express unambiguous support of a reduction in sentence only for some, and may clarify PR 132 Rem: Hegel says that "rawness of mind" can be a ground for lesser punishment "but only for children or the insane (*Wahnsinniger*)."⁷⁸ The passage is strong evidence that Hegel supports a partial defense of insanity, but it could still leave open the possibility of reductions of punishment for reasons other than cognitive defects ("rawness of mind"), such as volitional impairments (acting in a moment of fury, or due to other sensuous drives).

Hegel sometimes struggles to make particular recommendations as he negotiates two partial truths: the need to recognize the reduced capacities of the insane, and the demand to recognize their semblance of humanity and rationality. In the "Anthropology" one senses that the latter claim is more empirical than normative, based on what Hegel has read concerning patients in asylums. In the *Rechtsphilosophie* it is more a normative claim: that we ought to treat every human being as if they are rational. It may be that he recognizes the empirical claim is suspect and is pulled by the power of the normative claim even in the "Anthropology," where he insists that people who are committed to asylums for their crimes be treated with compassion and not with a hard, punitive attitude.

Hegel's theory of criminal accountability can easily confuse: He says that one is accountable only for what lay in one's purpose, but also that we are responsible for harmful consequences of our acts regardless of whether we intended them. His position on insanity in the *Rechtsphilosophie* reflects an ambivalence: Hegel is torn between the view that the insane lack the capacities of fully rational agents, and that they retain a semblance of rationality and should be respected as human beings. Another reason Hegel's account can confuse is that he recognizes the indeterminateness of the line

78 *Rph I*, 66: „Es kann aber Roheit des Geistes geringere Stufen der Strafe begründen, aber nur, wenn er Kind oder Wahnsinniger ist.“

separating necessary and foreseeable from contingent consequences of acts. This confusion is not a result of Hegel not thinking through his position sufficiently; it reflects how we live in a contingent world where philosophical distinctions don't always let us neatly categorize the particular facts of that world. But despite some lack of definiteness in the details, we should not lose sight of the fact that Hegel supports an insanity defense in principle, and on grounds strikingly different from that of its utilitarian defenders, who would grant an insanity defense only insofar as someone who is insane cannot be deterred by punishment. For Hegel, we punish not to deter crime but to restore right. Criminals have flouted the requirements of the practices, institutions, and laws that make up the system of ethical life that gives them a sense of purpose and provides them their home. Their particular will in committing the crime contradicts their implicit will to do right, and punishment not only vindicates right but lets them overcome this contradiction. If the criminal lacked the capacity to flout right, we could not meaningfully punish them. In the *Rechtsphilosophie*, Hegel explicitly calls for a reduction in punishment at least for the insane with cognitive defects and, I have suggested, he might not rule out reductions in some particular cases for those with temporary volitional impairments.

What may be said of the insane person – that in breaking the law they are not really flouting right or contradicting their own implicit will – might also be said of someone who is not at home in the state whose laws they violate because they were brought up in another place with different values. I now turn to the cultural defense.

5.2 *Cultural Defense*

A cultural defense would excuse someone who violates the law of our state because they were brought up in a different culture where what they did in violating our law is not regarded as wrong and may even be praised or required. In Section 3 I gave the example of Ms. Kimura, who was initially charged in California with murder after attempting “mother-child suicide,” a practice not uncommon and with special significance in her native Japan. Michelle Moody-Adams objects to a cultural defense because she

doesn't think that someone's culture can make them unable to conform with the law – she rejects this “inability thesis” and instead argues that we all have the ability to do otherwise than our culture dictates.⁷⁹ In the philosophy of subjective spirit, besides discussing insanity Hegel also discusses the forces shaping a person's character, and what he says there tends to support Moody-Adams' position. If culture can be resisted, we might think it could not offer an excuse for wrongdoing. However, that is not the end of the matter as to what a Hegelian might say about a cultural defense, and I conclude by pointing to how Hegel's conception of freedom, tied as it is to his idea of ethical substance, calls on us to consider a cultural defense, not because culture makes certain actions impossible, but because right may demand it.

The early part of the “Anthropology” considers the “natural foundations” of character. Individuals have different natural endowments, dispositions, and temperaments and, Hegel says, some people “are more naturally disposed to possess a strong character than others.”⁸⁰ But cultural forces also shape our character, and Hegel suggests they play a greater role: When general culture (*gebildeten Nation*) regulates conduct, differences of temperament lose their importance.⁸¹ Virtue is not innate, but is produced in the individual by his own efforts and through discipline.⁸² Our cultural upbringing and education are important means of discipline, leaving open the possibility that someone who violates laws of their state of residence while carrying out what was ingrained into them by their native culture is not to be blamed because one cannot control what cultural upbringing one had.

Hegel notes some ways in which people of different races come to be a certain way that distinguishes them from other races.⁸³ Continuing in the manner of Montesquieu's *Spirit of the Laws*, Hegel draws

79 M. Moody-Adams, “Culture, Responsibility, and Affected Ignorance,” *Ethics*, vol. 104, no. 2 (1994), pp. 291–309.

80 *PM* §395 Z, p. 54.

81 *PM* §395 Z, pp. 52–53.

82 *PM* §395 Z, pp. 52, 60: a child's self-will “must be broken and destroyed by discipline.”

83 *PM* §393 Z, pp. 41–44 – but he denies that race is a ground for denying freedom and dominion to some, since human beings are implicitly rational.

generalizations: Arabs are indifferent to everything finite, are vindictive and guileful; Europeans have an infinite thirst for knowledge; those in the African interior, away from the sea, remain shut up within themselves and endure slavery; the Italians gesticulate, the Spaniards persecute with savage cruelty, and the Germans have a reputation of being profound but obscure.⁸⁴ But Hegel does not think that being Arab, or European, etc. determines one's character or behavior, for two reasons. First, Hegel points to other factors that can shape an individual. For example, he appears to believe that a child can receive morbid dispositions through injuries or violent emotions of the mother, an example of a "magic" tie that Hegel says can also occur between female friends with delicate nerves.⁸⁵ Hegel points also to other "circumstances" that "can have a magical effect on one individual, while another individual will remain quite unaffected by them. Circumstances are, therefore, blended with the inwardness of individuals in a contingent, particular manner."⁸⁶ This creates a person's "genius," which is part of the nature of a person that decides his action and destiny.⁸⁷ But there is a second, more powerful reason. While there are natural foundations of character, "only in the sphere of free spirit [is character] fully unfolded."⁸⁸ Hegel distinguishes the genius from free spirit which wills and thinks.⁸⁹ He recognizes the forces that shape an individual's development, culture included, but does not claim that when one reaches adulthood one is determined by these forces.

Hegel believes there are rare cases in which one literally *is* controlled by forces outside oneself. In the "Anthropology" he discusses hypnosis and other forms of being "magnetized" and subject to an alien power, and as noted earlier, he argues that persons subject to such forces are not accountable for their actions because they forfeit their freedom.⁹⁰ But as the placement of the "Anthropology" – a part of the philosophy of subjective

84 *PM* §393–394 *Z*, pp. 44–50. Cf. *Rph I*: 247, 466–471; and *PH*, pp. 79–102.

85 *PM* §405, pp. 94–95.

86 *PM* §405, pp. 100–101.

87 *PM* §406, p. 102.

88 *PM* §395 *Z*, p. 54.

89 *PM* §406, p. 102.

90 *PM* §406, pp. 115–117.

spirit – within the system as a whole indicates, the account of human beings in the “Anthropology” is not complete. Hegel believes that normal human beings, when fully developed, are able to abstract from particular determinations.⁹¹ Hegel rejects psychological determinism and takes a position in the free will vs determinism debate that has been described as “strikingly compatibilist” because he recognizes both the sense in which the will has natural determinations as well as the will’s capacity to abstract: We “*can* act against our drives, desires, motives,” even if they are physically determined.⁹²

That her culture may not have forced Ms. Kimura to commit mother-child suicide in California does not mean there are not other reasons to take her culture into account. While I’m unaware of Hegel ever addressing a case like hers, the political philosophy that grounds his theory of punishment opens the door for a cultural defense. The reason we punish is to restore right, which inheres in the practices and institutions of our system of ethical life. That system constitutes our ethical substance. By being socialized or shaped by its practices and laws we have developed our notion of right and wrong and of our duties. But Ms. Kimura did not grow up in the U.S., and once here she lived in a sheltered Japanese community, speaking her native language, practicing her native customs. Legally one has the obligation to learn the laws of one’s new land, and Hegel would surely not argue that Ms. Kimura was justified in killing her children. But when assessing her culpability, as Hegel would, it may matter that the standards Ms. Kimura is being judged by in California are not the ones she was raised by. If the goal of punishment is to turn the criminal’s implicit will back against the particular will that led to the crime, that goal might not be achieved by punishing her to the full extent of the law, in the same way we would punish a mother who murdered her children not so that they could escape a life of shame and join her in an after life, but because she coldly deemed them a burden.⁹³

91 *PR* 5.

92 A. Wood, *Hegel’s Ethical Thought* (New York: Cambridge University Press, 1990), p. 151.

93 Contrast the case of Ms. Kimura with that of Susan Smith, who in 1994 murdered her two children allegedly to advance a relationship with a man who did not want children.

6 Conclusion

Hegel conceptualizes freedom as being at home in the practices and institutions that are one's ethical substance. He argues that punishment is consistent with a criminal's freedom if they violated the demands of the system of ethical life that constitutes their ethical substance. If the criminal was raised in a different culture, or was insane, Hegel's political philosophy provides a basis for arguing that they should not be held fully accountable for their actions. Not only does he speak to important issues of public concern today, but his approach offers an important challenge to utilitarians and theorists who resolve legal issues by asking what outcome is most economically efficient. They may be too quick to dismiss Hegel because they regard his philosophy as unintelligible.⁹⁴ Hegel's views not only are intelligible, they reflect an understanding of an individual's place in society and the importance of social relations, upbringing, and conceptions of freedom and human dignity that is sometimes lacking in the analysis of his utilitarian-minded critics.

94 Kaplow and Shavell, *Fairness Versus Welfare*, ch. 6.

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